

Deposition of MICHAEL STEFANI on January 30, 2008

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1 STATE OF MICHIGAN
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
 3 DETROIT FREE PRESS, INC.,
 4 a Michigan corporation,
 5
 6 Plaintiff:
 7
 8 -vs- No. 08-100214-CZ
 9 HON. ROBERT COLOMBO, JR.
 10 CITY OF DETROIT,
 11
 12 Defendant:
 13 _____/
 14
 15 DEPONENT: Michael L. Stefani, Esq.
 16 DATE: Wednesday, January 30, 2008
 17 TIME: 1:00 P.M.
 18 LOCATION: Stefani & Stefani
 19 512 East Eleven Mile Road
 20 Royal Oak, Michigan
 21
 22 REPORTER: Candace C. Noblett, (R-2238)
 23
 24
 25

2

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 33 Appearing on behalf of the Defendant:
 34 * * *

3

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 13 DEPOSITION EXHIBIT NUMBERS
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1 Royal Oak, Michigan
 2 January 30, 2008
 3 1:50 A.M.
 4 * * *
 5 (WHEREUPON THE COURT REPORTER MARKED
 6 DEPOSITION EXHIBIT NUMBERS 1 THROUGH
 7 17, RESPECTIVELY, AND THE PROCEEDINGS
 8 IN THIS MATTER COMMENCED WITHOUT THE
 9 PRESENCE OF VALERIE COLBERT-OSAMUEDE,
 10 ESQ.)
 11 M I C H A E L L. S T E F A N I
 12 Being first duly sworn to tell the truth, the
 13 whole truth and nothing but the truth,
 14 testified as follows:
 15 EXAMINATION
 16 BY MR FINK:
 17 Q Well, Mr. Stefani --
 18 MS. HA: (Interposing) Before Mr.
 19 Stefani --
 20 MS. MCPHAIL: No. Wait. Before you
 21 begin --
 22 MS. HA: (Interposing) Before you
 23 begin, Mr. Fink, with all due respect, I'd like to
 24 place a couple of -- couple of objections on the
 25 record.

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1 MR. FINK: Um-hum (affirmatively).
2 MS. HA: First of all, the record
3 should reflect that Mr. Fink has indicated that Mr.
4 Stefani's production of documents here during the
5 deposition, prior to the deposition officially
6 taking place, that these records were provided to
7 counsel of record to the Detroit Free Press,
8 Detroit News, and that Mr. Fink has indicated, at
9 least on behalf of the Free Press, that he will
10 take the record that was produced himself, and will
11 deliver them to the court tomorrow morning.

12 The City of Detroit objected to that issue
13 for the reason that with all due respect to Mr.
14 Fink personally, as a gentleman and as a lawyer, we
15 have no guarantees what's going to happen after Mr.
16 Fink walks out of this room. Mr. Fink's car may
17 get stolen. It may be misplaced in his home. We
18 have absolutely no guarantees. And the City of
19 Detroit will be prejudiced by Mr. Fink's --

20 MR. FINK: (Interposing) Being
21 mugged?

22 MS. HA: I don't know. Anything
23 could happen. And we cannot take that risk,
24 pursuant to this Court's order, which specifically
25 indicates that nothing produced during this

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1 recording, 2.306 (C)(2)(b) gives me, without your
2 consent, the right to tape record, as long as it is
3 not a surreptitious recording. And obviously
4 you're aware of it, okay?

5 MS. HA: And counsel for the City of
6 Detroit, for the record, is calling Judge Colombo
7 at this time to obtain a ruling on this matter, and
8 Mr. Fink has insisted that this deposition pursue.

9 MR. FINK: Okay. Mr. Stefani --
10 MS. MCPHAIL: (Interposing) And
11 on -- and since my name was mentioned, I'm Sharon
12 McPhail.

13 I'd also like to mention that Mr. Fink
14 indicated that he doesn't care what we think, and
15 that he's not willing to have discussions on these
16 matters; he's just going to do what he wants to do.
17 So we aren't able to have a collegial discussion
18 and come to any agreement, because Mr. Fink refuses
19 to do so. That's all.
20 Q (Continuing by Mr. Fink) Okay. Mr. Stefani, you
21 are the attorney, I understand, who represented the
22 plaintiffs, Mr. Brown, Mr. Nelthrope and Mr.
23 Harris, or all officers, I should say police
24 officers in the whistle-blower lawsuit against the
25 City of Detroit and Mayor Kwame Kilpatrick, is that

6

1 deposition or information during this deposition
2 shall be disclosed to anyone or any person.

3 MR. FINK: It doesn't -- it doesn't
4 say -- the order speaks for itself, Ms. Ha.

5 And let's begin the deposition, other than
6 to note on the record that Ms. McPhail just called
7 me an idiot. But other than that...

8 MS. HA: The second objection --

9 MS. MCPHAIL: (Interposing) Now,
10 that's not fair.

11 MS. HA: Wait. But the second
12 objection is that this deposition is being
13 tape-recorded by Mr. Fink.

14 I assume, Mr. Stewart, Detroit News is
15 taking no action in terms of tape recording this
16 deposition, am I correct?

17 MR. STEWART: I am not.

18 MS. HA: Okay.

19 MR. STEWART: But it is my point that
20 I am also intending to retain in my possession a
21 copy of the records that have been produced today.

22 MS. HA: And the same objection is
23 made for the Detroit News -- or, against the
24 Detroit News by the City of Detroit.

25 MR. FINK: With regard to the tape

8

1 correct?

2 A That's correct.

3 Q I think it ought to be self-evident, but I'm going
4 to ask you, because it appears to be an issue for
5 the city. In suing Mayor Kilpatrick, did you sue
6 him as a private citizen, or did you sue him in his
7 capacity as mayor of the City of Detroit for
8 allegedly illegal acts he committed in office?
9 A We sued him as the mayor of the City of Detroit.
10 Q Thank you. Now, in a story -- I'm glad Ms. McPhail
11 is here. In a story that the Free Press published
12 on January 28th, Ms. McPhail, who has filed and is
13 here, apparently filed an appearance as special
14 counsel to the City of Detroit, is identified as
15 the mayor's general counsel. But here's what she's
16 quoted as -- or, here's what she says. Now, I'm
17 going to ask you a question if this is consistent
18 with your knowledge. She's quoted in the Free
19 Press as saying that, "Calls for the Mayor to repay
20 the city for paying his legal bills in the
21 whistle-blower suit and the nine million dollar
22 judgment in that case are misplaced. The case
23 resulted because of Kilpatrick's official decision
24 justifying a taxpayer-funded legal defense, she
25 said."

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1 So I would ask you if that statement then
2 is consistent with the theory that you sued --
3 under which you sued the mayor?

4 MS. MCPHAIL: I'm going to object to
5 that. How would he know what's consistent with
6 that what?

7 But go on.

8 A We sued the mayor as the mayor of the City of
9 Detroit, as the chief executive.

10 Q (Continuing by Mr. Fink) She said that --

11 A (Interposing) We did not sue him in his individual
12 capacity.

13 Q All right. That's fine. Thank you.

14 And to your knowledge, and we'll get into
15 this in more detail subsequently, did the City of
16 Detroit itself, and obviously its taxpayers
17 indirectly, pay and settle or satisfy this I think
18 8.4 million dollar judgment against Mayor
19 Kilpatrick and the city?

20 A Yes. You spoke -- you misspoke a minute ago and
21 said it was a nine million dollar judgment plus
22 expenses. And it was an 8.4 -- it was a
23 combination of two judgments, and it was settled
24 for 8.4 million dollars.

25 Q Okay. The media's had a number of statements about

11

1 accrued interest was -- brought the total amount to
2 7.9 million.

3 And I was asking for a one hundred -- a
4 one million dollar attorney's fee, for which I had
5 time records. And my normal practice is to bill by
6 the hour, and so we used the same system for
7 recording our time, and it justified a bill of a
8 million dollars.

9 And we ended up discounting that million
10 dollar attorney fee down to one hundred thousand,
11 which brought the settlement to -- from 7.5 -- 7.9
12 million to eight million. And then when we settled
13 the Harris case at the same time, that was settled
14 for an additional four hundred thousand. So the
15 total amount was eight million four hundred
16 thousand.

17 Q Okay. To your knowledge, did Kwame Kilpatrick pay
18 any part of that amount personally?

19 A You know, I only know what I read in the paper, and
20 it sounded like the city council authorized the
21 settlement. And there was no mention of Mr.
22 Kilpatrick, although the judgment was joint and
23 several, so we did have the right to collect from
24 Mayor Kilpatrick as well as the city. I don't know
25 where the eight point -- I assume it was all city

10

1 nine million dollars. Is that just false, or were
2 there some added expenses here for the other
3 lawsuit?

4 MS. HA: Objection as to foundation.
5 Mr. Stefani would have no idea what the -- would
6 not be able to testify on behalf of the news media,
7 unless you want us to depose members of the media
8 who published the story about nine million dollars.

9 Q (Continuing by Mr. Fink) Okay. Can you answer
10 whether you understand where the nine million
11 dollar figure came from?

12 A I don't understand.

13 Q Okay.

14 A I mean, the settlement we arrived at was 8.4
15 million dollars. That is the only money --

16 Q (Interposing) Okay.

17 A -- that the -- that we received from the city.

18 Q Okay.

19 A There was no other money or secret money.

20 Of that 8.4, four was for the Walter
21 Harris case; and the Brown and Nelthrope had, I
22 believe, a -- total verdicts of about I think it
23 was 6.5 or 6.4 million. The accrued interest on
24 that verdict -- since there were appeals taken,
25 that delayed the case four and a half years. The

12

1 money, because the checks we received, which are in
2 these documents I just -- I provided for you for --
3 Q (Interposing) Yes, I'll get to those.

4 A Okay.

5 Q Okay.

6 A They were all -- all the checks were City of
7 Detroit checks. Nothing came from Mr. Kil -- or,
8 Mayor Kilpatrick's account.

9 Q Okay. Now --

10 A (Interposing) There was --

11 Q (Interposing) Go ahead. Are you done?

12 A I was going to say, the checks are at the end of
13 the pile.

14 Q Okay. And I'll have those marked, or I have them
15 marked. We'll get to them later in the deposition.

16 On October 19th, 2007, the Detroit Free
17 Press submitted a Freedom of Information Act -- or,
18 request under the Freedom of Information Act for,
19 "All documents or other information related to the
20 settlements." And I'm going to -- I'm just going
21 to -- I had this marked. I'm just going to put it
22 out here.

23 So even though you can't identify it, this
24 is an exhibit in the Freedom of Information
25 lawsuit. So let me just get that out and give a

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1 copy to everyone.
2 MR. FINK: Let's see. There's a copy
3 for you all, and one for Mr. Stewart.
4 Q (Continuing by Mr. Fink) Okay. Now, again, you
5 would not directly have knowledge of this, but the
6 City of Detroit advised Mr. Schaefer that it had no
7 responsive documents, and that he should submit a
8 request at a later point in time. And he will
9 submit an Affidavit to that account. I will just
10 tell you that he was directed to submit a later
11 request, which he did --
12 MS. HA: (Interposing) I would just
13 object to the comment, for the reason that nobody
14 else knows better than I do, the City of Detroit,
15 for the record, and it is not disputing that it did
16 receive a first Freedom of Information Act request
17 from the Detroit Free Press dated October 19th,
18 2007. The City of Detroit did not advise Mr.
19 Schaefer, because the City of Detroit cannot advise
20 anybody other -- the counsel for City of Detroit,
21 as a FOIA coordinator, cannot advise anyone other
22 than its client.
23 Secondly, the records -- I'm sorry, the
24 request, the first request was denied for the
25 reason that there was no settlement agreement, and

14

1 there was no document responsive to the FOIA
2 request.
3 (WHEREUPON VALERIE COLBERT-OSAMUEDE,
4 ESQ. ENTERED THE DEPOSITION ROOM.)
5 MS. HA: I did not advise Mr.
6 Schaefer to submit a second request.
7 MR. FINK: All right. Well, in any
8 event, Exhibit 2 is Mr. Schaefer's second request
9 dated November 13, 2007.
10 MS. MCPHAIL: Excuse me, Mr. Fink.
11 MR. FINK: Yes.
12 MS. MCPHAIL: The Court is going to
13 set up a conference call, and would like us to stop
14 now and speak to the Court.
15 MS. COLBERT-OSAMUEDE: So, Mr.
16 Stefani, I don't know if you can call the Court
17 back on the phone?
18 (WHEREUPON A BRIEF PAUSE WAS HAD IN
19 THE PROCEEDINGS, FOR A
20 TELECONFERENCE AS FOLLOWS:)
21 JUDGE COLOMBO: Hello. This is Judge
22 Colombo.
23 MS. COLBERT-OSAMUEDE: Judge Colombo,
24 this is the parties on the FOIA matter with the
25 City of Detroit. This is Valerie Colbert-Osamuede

15

1 speaking to you.
2 We just began our deposition, and the
3 question was posed or it has come to our attention
4 that the Free Press plans to leave the room with
5 the records that have been produced, which we
6 believe is in violation of your court order. And
7 also there is a recording device outside of the
8 court reporter being utilized by Mr. Fink as well.
9 So we wanted to get a ruling as to whether
10 or not the court reporter is to seal the records
11 and to deliver them to the Court, and none of the
12 parties are to take the records out of this room.
13 JUDGE COLOMBO: Okay.
14 MR. FINK: May I be heard, your
15 Honor? Herschel Fink.
16 JUDGE COLOMBO: Right.
17 MR. FINK: A couple of things. I
18 have asked the court reporter to expedite a
19 transcript and to deliver it to me tonight.
20 I have a set of the documents that Mr.
21 Stefani produced pursuant to your order. Everyone
22 is aware of the fact that you have issued a
23 non-disclosure order. We are all subject to that.
24 My intention is to present to you tomorrow
25 morning, along with Mr. Stewart representing the

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1 Detroit News, the official transcript, along with
2 the documents, and an argument why you should read
3 it as quickly as you are able to, and release it as
4 quickly as you are able to. In order for me to do
5 that, I need a set of all of the materials. As I
6 said, I am subject to the non-disclosure provision.
7 I brought my own tape recorder pursuant to
8 MCR 2.306 (C)(2)(b), which gives me the right, as
9 long as it's not surreptitious, without consent of
10 parties to record it myself.
11 And I don't think we have a problem, other
12 than constant interruptions and objections from a
13 gaggle of city lawyers who all insist that they are
14 going to make objections, when I've asked only one
15 to do so. Ms. McPhail has shown up and said she's
16 going to make objections, as well as Ms. Ha. And
17 so as long as you're making rulings on various
18 things, I would ask that you do rule on whether one
19 city lawyer speaks for the city.
20 MS. COLBERT-OSAMUEDE: Well, your
21 Honor, there's three attorneys in the room, three
22 attorneys for the City of Detroit in the room, and
23 so there's six attorneys, three on each side.
24 And as a matter of fact, Ms. McPhail
25 indicated to Mr. Fink that Ms. Ha will be

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1 conducting the deposition, and that she would be
2 making the relevant objections. She also indicated
3 that she may have questions, and if she were going
4 to have questions, she didn't see where there was
5 any reason why she could not make the objections
6 or -- not objections, but ask questions on the
7 record.

8 So one person will be speaking at a time
9 for the City of Detroit during this deposition.

10 JUDGE COLOMBO: Okay.

11 MR. STEWART: Your Honor, if I may,
12 this is James Stewart.

13 I also -- it is also my plan to retain the
14 records tonight subject to the non-disclosure
15 order, that Mr. Stefani has produced today, for the
16 same reasons that Mr. Fink explained.

17 JUDGE COLOMBO: Okay.

18 MS. HA: Your Honor, this is Ellen
19 Ha.

20 This poses a big question for the City of
21 Detroit. I assume Mr. -- if Mr. Fink and Mr.
22 Stewart walks out with a copy of the private
23 agreements, then the city would also be required to
24 do so. I think it's only fair that we do the same.
25 Except once -- this is how -- this is our entire

19

1 just sat through the depositions, and you'll be
2 able to paraphrase what occurred in -- or whatever
3 happened in terms of that, and I'll be able to
4 confirm that.

5 In addition, I assume that the transcript
6 will mark the exhibits, and they will be made part
7 of the records. So the court reporter should also
8 deliver the exhibits to me, okay?

9 The second thing, it's fine, the court
10 rule allows Mr. Fink to make a recording. But
11 again, you cannot give that recording to anybody,
12 Mr. Fink. It's for your own personal purposes.
13 And if I find that it's been turned over to anybody
14 outside of that room, you'll be in contempt of
15 court. Understood?

16 MR. FINK: Understood, your Honor.

17 JUDGE COLOMBO: And only one -- there
18 has to be designated a city attorney to handle this
19 matter. Only one city attorney should ask
20 questions, make objections. Now, if that attorney
21 wants to consult with the other attorneys, that's
22 fine. But I only want one attorney handling this
23 matter on the record. And that's what we do in
24 every trial that we hold.

25 So do we know who that's going to be?

18

1 theory of the case and our defense in this case,
2 once we possess this record and we walk out of
3 here, we have a legal obligation to produce all of
4 these records, which are not our records. This
5 is -- this is the record of Kwame M. Kilpatrick.
6 That is a big legal issue for us, the City of
7 Detroit.

8 JUDGE COLOMBO: Okay. Anybody else
9 want to say anything?

10 MR. FINK: No, your Honor. But when
11 you see these records, I think you'll understand
12 what's going on here. But I won't pre-judge it.

13 JUDGE COLOMBO: Okay. Here's what I
14 want. I do not want the court reporter to turn any
15 transcripts over to the attorneys. The transcripts
16 should be -- and all exhibits should be given
17 directly to me. So whenever that can happen, I
18 guess it would be the first thing tomorrow, 'cause
19 I doubt that the transcript will be prepared by the
20 close of the business day. So I would expect that
21 would be brought to my office at 1101 Coleman A.
22 Young Municipal Center.

23 I don't believe that the attorneys for the
24 Free Press or the News need to have the transcript
25 to be able to prepare their motions. You'll have

20

1 MS. COLBERT-OSAMUEDE: Well, two
2 things, Judge, so just so I'm clear or we're clear.
3 No one takes the documents out of the room, is that
4 correct?

5 JUDGE COLOMBO: Other than the court
6 reporter.

7 MS. COLBERT-OSAMUEDE: Other than the
8 court reporter.

9 JUDGE COLOMBO: And then they'll be
10 attached to the record that I'm going to get
11 delivered to my office I presume the first thing
12 tomorrow morning.

13 MS. COLBERT-OSAMUEDE: Okay.

14 MR. FINK: Your Honor, I have one
15 problem --

16 MS. MCPHAIL: (Interposing) She's
17 not done.

18 MR. FINK: -- that I need to advise
19 the Court of.

20 JUDGE COLOMBO: What is that?

21 MR. FINK: All right. I have -- when
22 I received the documents this afternoon in
23 connection with the deposition, I asked for a
24 second copy so that I could highlight and annotate,
25 so that I can ask Mr. Stefani relevant questions.

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1 So in addition to the copies that will be the
2 official copy, I have a set that contain my notes
3 as to the significance of various points and
4 statements in these records. I would like to be
5 able to retain my copy, with my notes, subject to
6 your protective order -- or, your order. I'm
7 subject to your order, the same as with the
8 recording.

9 JUDGE COLOMBO: No. That was not my
10 intention that you would just -- just because you
11 would write on a copy, that you would be able to
12 bootstrap yourself up into getting those documents.
13 I'm not going to permit that. Either those
14 documents are going to be destroyed at the end of
15 the deposition, or they're going to be made part of
16 the record that is submitted to me.

17 So what do you -- what do you want to do
18 about that, Mr. Fink? How are you going to handle
19 that?

20 MR. FINK: Well, obviously I can use
21 it during the deposition?

22 JUDGE COLOMBO: Right.

23 MR. FINK: Because I've noted all
24 these things. I don't know what you want me to do
25 with it, your Honor, but that's part of my ability

22

1 to prepare a -- an intelligent argument to you as
2 to the significance, is being able to point to
3 specific things in these documents that contradict
4 statements made directly to you, as well as
5 statements made in writing to the Free Press and in
6 pleadings before you.

7 JUDGE COLOMBO: Mr. Fink, I am sure
8 you'll be able to paraphrase those things. I am
9 confident in your ability. I don't believe that
10 you need to have those with you to write a brief,
11 and I'm not going to let you do that.

12 MR. FINK: Okay. Then I will -- I
13 suppose I --

14 JUDGE COLOMBO: (Interposing) Will
15 you dispose of those documents? Is there a
16 shredder at Mr. Stefani's office?

17 MR. FINK: Either that, or I'll give
18 them back to Mr. Stefani.

19 A Your Honor, this is Mike Stefani. And I just want
20 you to know that I've made four copies of the
21 exhibits, and I've furnished two to the city and
22 two to Mr. Fink.

23 (WHEREUPON RICHARD ZUCKERMAN, ESQ.,
24 LEFT THE DEPOSITION ROOM.)

25 A And then of course I have what -- I have my own

23

1 copy, which I suppose will be introduced into
2 evidence. So there are actually five copies of
3 these documents in this deposition.

4 JUDGE COLOMBO: Well, my expectation
5 is that, Mr. Stefani, that you will collect the
6 other four copies, the two that you gave to the
7 city attorneys and the two that you gave to Mr.
8 Fink, and hold those, and not allow anyone to see
9 those. And that your -- your copy apparently is
10 the copy that you intended to be marked as the
11 exhibit, and that should be provided to the court
12 reporter.

13 A Yes, sir, I understand.

14 JUDGE COLOMBO: Okay.

15 MS. HA: Your Honor --

16 MR. FINK: (Interposing) Understood,
17 your Honor.

18 MS. HA: Your Honor, this is Ellen Ha
19 again. I'm sorry.

20 It just occurred to me that -- and I
21 assume that this is part of the order, but can we
22 also have a ruling that Mr. Stefani not talk about
23 today's deposition to anyone or disclose any of the
24 records to anybody else?

25 JUDGE COLOMBO: Well, he's already

24

1 under a confidentiality order. I allowed him to
2 only talk about this in terms of the deposition. I
3 think it's obvious that he's not supposed to talk
4 to anybody about this, should not be talking to the
5 media about this on anything.

6 But I think maybe I should enter an order
7 to that effect, and instruct Mr. Stefani that
8 you're not to have a discussion with the media or
9 anybody else afterwards about what was discussed
10 during this deposition. Do you understand that,
11 Mr. Stefani?

12 A Well, I -- I read your original order to encompass
13 that.

14 JUDGE COLOMBO: Okay.

15 A And I will say on the record now that I agree that
16 I will not discuss the deposition or the documents
17 or furnish the documents to anyone.

18 (WHEREUPON RICHARD ZUCKERMAN
19 RE-ENTERED THE DEPOSITION ROOM.)

20 A And I will follow the Court's order very strictly.

21 JUDGE COLOMBO: Okay. Because I
22 intend it to be followed strictly. Because one of
23 the reasons that this all became an issue, is
24 because you were talking to the media and suggested
25 that there were some confidential agreements there,

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1 Mr. Stefani.
2 So the question becomes, do I need to have
3 another order with respect to that, or is the order
4 that I entered sufficient, Ms. Ha?
5 MS. HA: It's sufficient for the
6 reason that there is a court reporter here who is
7 taking down everything that is being said.
8 JUDGE COLOMBO: Okay. All right. Is
9 there anything else that we need to take up?
10 MS. COLBERT-OSAMUEDE: One other
11 thing with respect to your decision, Judge, about
12 the attorneys for the City of Detroit, one speaking
13 for the city. Is the mayor allowed a
14 representative in this -- in his official capacity
15 in today's proceeding?
16 JUDGE COLOMBO: There's been no
17 motion to intervene by anybody other than the
18 Detroit News. And so as far as I'm concerned, the
19 only parties to this deposition are the Free Press,
20 the News, and the City of Detroit. So why would a
21 nonparty be permitted to -- to participate, when
22 there was no motion to intervene?
23 MS. COLBERT-OSAMUEDE: So the mayor
24 is not allowed a rep in his official capacity, is
25 that my understanding?

26

1 JUDGE COLOMBO: That's the -- well,
2 there's no motion to intervene. I presume the
3 mayor's known about this, and this action has been
4 in the newspaper, so yes, that's my ruling.
5 MR. FINK: Well, your Honor, I would
6 just note that Ms. McPhail's official job is
7 general counsel to Mayor Kwame Kilpatrick, yet
8 she's here participating in this deposition on
9 behalf of the City of Detroit.
10 MS. COLBERT-OSAMUEDE: She -- she is
11 special counsel to the City of Detroit. She has
12 been duly noted as special counsel pursuant to the
13 charter to the City of Detroit, and she's entered
14 an appearance with that specific delegation, and it
15 has been filed with the Court as well.
16 JUDGE COLOMBO: Well, that's
17 satisfactory to me. As long as she's representing
18 the City of Detroit, I don't see that there's a
19 problem.
20 MR. FINK: Okay, your Honor.
21 JUDGE COLOMBO: Okay.
22 MR. FINK: Thank you.
23 MS. HA: Thank you, your Honor.
24 JUDGE COLOMBO: Thank you. Hopefully
25 you'll be able to get this in. I'm hoping that

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1 there's not going to be anymore interruptions. I
2 am in a trial this afternoon, Counsel, so try to
3 work through your problems. And if it -- if it
4 really becomes important that you talk to me, I
5 would prefer that you wait until 3:45 to call me,
6 when I'm going to be done with my trial for the
7 day.
8 MR. FINK: Thank you, your Honor.
9 JUDGE COLOMBO: Okay. Bye.
10 MS. HA: Thank you, your Honor.
11 (WHEREUPON THE TELECONFERENCE
12 CONCLUDED AND THE PROCEEDINGS
13 CONTINUED AS FOLLOWS:)
14 A So remember, everyone, there have been four copies;
15 two to the Free Press, two to the city, and I would
16 appreciate it if you give those to me.
17 Q (Continuing by Mr. Fink) We'll give them all back.
18 A So that I'm not -- diligent in my duties.
19 Q Okay. Continuing where we left off was, Mr.
20 Schaefer did indeed submit, and that's Exhibit
21 Number 2, a request dated November 13, 2007. And
22 the record will reflect -- the document will
23 reflect that it is somewhat broader. And in
24 addition to requesting that the city produce, "All
25 documents or other information related to the

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1 conclusion of the cases", it goes on and expressly
2 asks for, "Any and all documents that the city or
3 its lawyers may consider or have labeled
4 'confidential'."
5 All right. So now in response to the Free
6 Press' second request, the city, on December the
7 7th, produced just two documents that they -- the
8 city claimed, and I'm going to mark as Exhibit
9 Number 3, it's also in evidence -- or, it's an
10 exhibit to our lawsuit, the cover letter dated
11 December the 7th, 2007, from the city.
12 They produced two documents, both of them
13 labeled, and we'll mark those 4 and 5, Settlement
14 Agreement and General Release. And I'll go through
15 the dates, so the record is clear as to what was
16 produced by the city. And those are also exhibits
17 to the Free Press' Complaint in this case.
18 I'm handing Mr. Stefani, just for purposes
19 of reference, Exhibit Number 4. And I'm going to
20 go through it, because I think he can identify
21 those. And Exhibit Number 5. And I will give
22 copies to everyone.
23 This is 5, and this is 5, and this is 4,
24 and this is 4 (indicating).
25 MR. STEWART: Thanks.

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1 Q (Continuing by Mr. Fink) Okay. Now, Exhibit
2 Number 4 is the Settlement Agreement and General
3 Release in the Harris case. And, Mr. Stefani, are
4 you able to identify Number 4 as the settle -- a
5 Settlement Agreement and General Release in the
6 Harris case?
7 A Yes, that's correct.
8 Q All right. And just to walk you through it, that
9 agreement is signed of course by Walter Harris, who
10 was the plaintiff, dated November 1, '07. It is
11 signed by Valerie Colbert -- is it Os -- I'm sorry.
12 A Osamuede.
13 Q Osamuede.
14 MR. FINK: I have problems, and I
15 apologize to you.
16 MS. COLBERT-OSAMUEDE: That's fine.
17 MR. FINK: If I just say Valerie
18 Colbert --
19 MS. COLBERT-OSAMUEDE: (Interposing)
20 That's fine.
21 Q (Continuing by Mr. Fink) And she signed in her
22 capacity as attorney both for the city and Kwame
23 Kilpatrick, is that correct? Does that appear on
24 there?
25 A Yes.

30

1 Q And then --
2 MS. HA: (Interposing) Well, that's
3 not correct. It does say Kwame M. Kilpatrick. And
4 under Ms. Colbert's signature, it says, "Attorney
5 for Defendants." And whomever the defendants may
6 have been for that case, that is what it appears to
7 be. And City of Detroit, it was signed by Ms.
8 Colbert, and it says, "Attorney for Defendants."
9 MR. FINK: Well, in fact she signed
10 it under Kwame Kilpatrick, and she signed it under
11 City of Detroit as authorized agent. It speaks for
12 itself, Ms. Ha.
13 MS. HA: Okay.
14 Q (Continuing by Mr. Fink) Now, Exhibit Number 5,
15 Mr. Stefani, can you identify as a Settlement
16 Agreement and General Release in the Brown and
17 Nelthrope case?
18 A Yes.
19 Q And it's signed on November 1 by both Brown and
20 Nelthrope, and notarized by you, correct?
21 A That is correct.
22 Q And on this Settlement Agreement, Samuel McCargo,
23 or Sam -- I don't know. Let me see what it says.
24 I can't see. Maybe it's just his initials. But
25 Mr. McCargo signed for Kilpatrick on December 5.

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1 And can you -- you can confirm that?
2 A That's correct.
3 Q And a William Copeland, II, also signed on December
4 5. And his signature is marked as authorized agent
5 for the City of Detroit. Can you confirm that as
6 well, Mr. Stefani?
7 A That's correct.
8 Q Now, referring to both 4 and 5, can you confirm
9 that each of those agreements contained what we
10 lawyers refer to as an integration clause, saying
11 that each of those two agreements contains the
12 entire agreement, and supersedes all other
13 agreements with regard to the subject material?
14 MS. HA: I'm sorry. What paragraph
15 are you referring to?
16 MR. FINK: Well, it's a different
17 paragraph in each one, but it's the one that says
18 "Entire Agreement."
19 A If you look, it's Paragraph 11 in Exhibit 5.
20 Q (Continuing by Mr. Fink) Yeah.
21 A And para -- well, both are Paragraph 11. One's --
22 one's -- Exhibit 4, it's on Page 3 -- well, they're
23 both on Page 3, also.
24 Q And you can confirm that that says that, correct?
25 A Well, you know, you paraphrased it, and the

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1 agreement really speaks for itself. It says -- it
2 says approximately what you said, but not in those
3 exact words.
4 Q All right. Well, my -- you're absolutely correct,
5 the agreement speaks for itself. But the question
6 I have now for you is, was that a true statement?
7 A It says, "This Agreement contains the entire
8 agreement and understanding between Plaintiff and
9 Defendant -- Defendants, with respect to any and
10 all disputes or claims that Plaintiff has, or could
11 have had, against the Defendants as of the date of
12 this Agreement -- the date this Agreement is
13 executed, and supersedes all other agreements
14 between Plaintiff and Defendants with respect to
15 such disputes or claims and may not be amended
16 except in writing, signed in -- in a writing signed
17 by all the parties."
18 Q And is that true that this -- this document, 5
19 and -- these documents, 4 and 5, contain the entire
20 agreement and understanding between the plaintiffs
21 and defendants with respect to any and all disputes
22 or claims? Is that a -- was that a true statement?
23 A (No response).
24 Q Stated another way, were there other agreements?
25 A There were. There was the Confidentiality

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1 Agreement that was executed, I believe, on the same
2 date. But as -- you know, whether or not that
3 Confidentiality Agreement relates to a dispute
4 between the plaintiffs and the defendants, is a
5 matter of interpretation. It could be -- it could
6 be interpreted as -- it certainly -- the
7 Confidentiality Agreement doesn't relate to the
8 whistle-blower claim. It relates to certain
9 documents that were intended to be kept
10 confidential by the parties. So I suppose it's --
11 you know, you could interpret it as being
12 encompassed by the -- that the language in
13 Paragraph 11 could encompass that agreement. But I
14 think an argument could be made -- if you're asking
15 my opinion, an argument could be made that the
16 Confidentiality Agreement relates to the text
17 messages, and doesn't relate to the original
18 disputes between the parties.
19 Q Would -- would the case have settled without the
20 Confidentiality Agreement, in your opinion? And
21 I'll get to the specifics of it later, but just
22 that much.
23 MS. HA: Objection as to foundation.
24 And he's -- you're asking the witness to speculate
25 on whether or not -- it's just his opinion.

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1 MR. FINK: Fine. I'll take his
2 opinion.
3 MS. HA: That -- I think that is a
4 legal conclusion that would -- that ultimately has
5 to be made by Judge Colombo.
6 MR. FINK: Ms. Ha, it's either an
7 opinion or a legal conclusion. I think it's an
8 opinion, and that's what I'm asking him.
9 A Well, I can't -- the best way I can answer that is,
10 when we met for facilitation on the --
11 MS. HA: (Interposing) I'm going to
12 object, because I'm not sure if Mr. Stefani knew
13 this, and we might have to call the judge. But Mr.
14 Fink, and I'm sorry, Mr. Stewart, but I completely
15 failed to mention this, but during our meeting with
16 Judge Colombo in chambers, Mr. Fink and I and Judge
17 Colombo had some discussions. And the court rule
18 is very clear regarding any testimony pertaining to
19 mediation and facilitation. And I'm referring to
20 MCR 2.411. And Mr. Fink gave his word that -- to
21 the judge and to myself, that that line of
22 questioning will not be pursued.
23 MR. FINK: In response, Ms. Ha, and
24 I'll be very specific later, but in general as to
25 the representation about what occurred before Judge

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1 Colombo, you will recall that I was not served with
2 a copy until Monday. This occurred in chambers on
3 Friday. Your office sent over a document that only
4 you looked at and then raised verbally with the
5 judge about the privilege you said applied to what
6 took place in mediation. And I said to the judge,
7 "I am not interested in things that occurred three
8 years ago in mediation, your Honor, and I don't
9 intend to ask questions about it." It was only on
10 Monday you when you -- your office actually served
11 me a copy of the document that was taken over to
12 chambers and given to you, that I saw there was a
13 reference to the October 17, 2007 facilitation with
14 regard to attorney fees.
15 Now, the court rule that you cited,
16 relates -- assuming it applies, and assuming it
17 isn't superseded by the crime fraud exception to
18 all privileges, which the judge can determine
19 later, it -- on its face, the court rule refers to
20 statements made. I'm not asking Mr. Stefani, and I
21 don't believe he was about to tell us about
22 statements that were made at the mediation, but
23 rather actions that took place and what happened at
24 the facilitation. And that is outside even of the
25 court rule, assuming the court rule applied.

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1 MS. HA: Well, can we just take a
2 break for a moment to review the statute? I have
3 to --
4 MR. FINK: (Interposing) It's not a
5 statute. It's a court rule.
6 MS. HA: I mean the court rule. Can
7 we take a break?
8 MR. FINK: A short one.
9 MS. HA: Yeah.
10 MR. FINK: But I don't intend to be
11 here all night.
12 (WHEREUPON A BRIEF PAUSE WAS HAD IN
13 THE PROCEEDINGS.)
14 MS. HA: I'm ready.
15 MR. FINK: Okay.
16 MS. HA: I'm just going to place an
17 objection on the record.
18 MR. FINK: Sure.
19 MS. HA: I think MCR 2.411(B)(5)
20 speaks for itself. But I also believe that when it
21 says statements made during the mediation,
22 including statements made in written submissions,
23 also is interpreted to mean actions taken. Because
24 I don't think you can separate the actions without
25 statements being made.

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1 And I move to strike Mr. Stefani's
2 testimony --
3 MR. FINK: (Interposing) Oh, you can
4 move --
5 MS. HA: (Interposing) -- pertaining
6 to that.
7 MR. FINK: You can move to strike in
8 front of the judge, because I think we're going to
9 just put it all on the record. It's subject to
10 confidentiality. And you can make your objection
11 to the judge. He can decide whether the
12 exception -- or, the court rule applies or doesn't
13 apply, okay? And I think that that's particularly
14 relevant to some of the public policy reasons that
15 might apply to this in terms of whether this record
16 will reveal --
17 MS. HA: (Interposing) Well.
18 MR. FINK: (Interposing) -- crimes
19 or frauds.
20 MS. HA: I'm objecting, and I am
21 requesting --
22 MR. FINK: (Interposing) Okay.
23 MS. HA: -- that Mr. Stefani not
24 answer that question.
25 MR. FINK: You will recall that the

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1 judge told you specifically you have no right to
2 direct Mr. Stefani not to answer a question.
3 MS. HA: I'm not directing him.
4 MR. FINK: Okay.
5 MS. HA: I'm asking Mr. Stefani not
6 to answer that question, because I think that that
7 would be a breach of Michigan Professional Rules of
8 Conduct.
9 MR. FINK: Well, I'm glad you're the
10 expert, but the judge expressly said in my presence
11 to you, that of course you don't have the right to
12 direct him not to answer. So...
13 MS. HA: Well --
14 MR. FINK: (Interposing) Let's go
15 forward.
16 Q (Continuing by Mr. Fink) Do you need the court
17 reporter to read you back where you were, what you
18 were starting to say?
19 A No, not really. I only got a couple words out.
20 It's -- all I was going to say -- your
21 question was, would there have -- in my opinion
22 would the case have settled without the
23 Confidentiality Agreement I believe you said.
24 Q Yes.
25 A And I was going to answer that by saying I -- a few

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1 months prior to that time, I had another case
2 against the City of Detroit involving Lieutenant
3 Bowman. And we had a facilitation to --
4 MS. HA: (Interposing) Same
5 objection.
6 A To arrive at attorney's fees. And Ms. Osamuede and
7 I conducted that facilitation. And during the
8 course of that facilitation, I --
9 MS. HA: (Interposing) Objection.
10 A -- asked her if she would be amenable to
11 facilitating not just the attorney's fees, but the
12 appellate rights, or the whole case in other words.
13 And she made a phone call and agreed to it, and we
14 facilitated the whole case.
15 In this case, we had a facilitation
16 ordered by the judge for attorney's fees. When I
17 say this case, I'm talking about the
18 Brown/Nelthrope case. And we spent an hour or more
19 negotiating attorney's fees. And at that time I
20 asked if the city would be interested in
21 facilitating the entire case, that is the appellate
22 rights. And I was told -- at that facilitation,
23 there was Ms. Osamuede --
24 MS. HA: (Interposing) I'm going to
25 object to Mr. Stefani further --

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1 MR. FINK: (Interposing) You have a
2 standing objection, Ms. Ha, to anything having to
3 do with the facilitation. I will so agree.
4 MS. HA: And I still have the right
5 to make an objection.
6 MR. FINK: Not to continually
7 interrupt with the same interruption or the same
8 objection when it's already on the record. And you
9 object to anything having to do with the
10 facilitation.
11 MS. HA: That's my right.
12 MR. FINK: I don't think it's your
13 right to continually interrupt.
14 Q (Continuing by Mr. Fink) But go ahead, please, Mr.
15 Stefani. Finish what you were saying.
16 A Ms. Osamuede was present, Mr. Copeland was present,
17 Mr. McCargo was present, and there were two other
18 attorneys that were assisting McCargo and Copeland.
19 So that's a total of I guess five attorneys for the
20 defendants. And they said --
21 MS. HA: (Interposing) I'm going to
22 object. That's a statement made --
23 A (Interposing) Okay.
24 MS. HA: -- during facilitation.
25 Q (Continuing by Mr. Fink) Go ahead.

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1 A In any event, they declined --
 2 MR. FINK: (Interposing) No. You
 3 can say it. You can say it, and the judge --
 4 MS. HA: (Interposing) No, you
 5 cannot.
 6 MR. FINK: The judge will decide
 7 whether it's --
 8 MS. HA: (Interposing) No. That is
 9 not what the judge said. We can call the judge
 10 right now.
 11 MR. FINK: You can call him any time
 12 you want, Ms. Ha. Let's continue with the
 13 deposition.
 14 Q (Continuing by Mr. Fink) Go ahead.
 15 MS. MCPHAIL: You can't continue
 16 while she's calling the judge.
 17 Q (Continuing by Mr. Fink) Go ahead, please.
 18 A In response to my question whether or not they
 19 wanted to negotiate the entire thing rather than
 20 just the attorney's fees, I should say that we were
 21 at approximately five hundred thousand dollars in
 22 attorney's fees.
 23 MS. HA: That is going into
 24 statements made during facilitation. I object.
 25 Q (Continuing by Mr. Fink) Continue.

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1 A And I told them that I would accept that for
 2 attorney's fees if --
 3 MS. HA: (Interposing) I would
 4 object. That is a statement made during
 5 facilitation, and I again move to strike.
 6 MR. FINK: You cannot continue to
 7 interrupt the witness. You've made your objection.
 8 Now he can answer if he chooses, and he chooses.
 9 So let's cut it out.
 10 MS. HA: And I can continue to
 11 object.
 12 A I told him I would take -- I think we were at four
 13 seventy-five or five hundred thousand dollars. And
 14 I said --
 15 MS. HA: (Interposing) Objection.
 16 A -- I will accept that amount if we can resolve the
 17 whole matter, and I was told that we couldn't
 18 resolve the whole matter.
 19 MR. FINK: Thank you. Okay.
 20 MS. HA: I'm going to move to --
 21 MR. FINK: (Interposing) I'll get
 22 back in --
 23 MS. HA: (Interposing) -- strike all
 24 of that testimony.
 25 MR. FINK: Ms. Ha -- never mind.

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1 Q (Continuing by Mr. Fink) Mr. Stefani, I'll get
 2 back to those agreements specifically, and what
 3 occurred on October the 17th, 2007, and
 4 subsequently -- and in subsequent questions.
 5 At the hearing that Judge Colombo held on
 6 last Friday, January 25th, in connection with that,
 7 the city filed a response to a motion that I had
 8 filed to expedite discovery. And they made the
 9 following statement at Page 3 of their response.
 10 I'm just going to read it to you. I don't need to
 11 mark it. It's part of the court file.
 12 The city's response said, "In regards to
 13 plaintiffs" that's the Detroit Free Press
 14 "assertion pertaining to 'additional confidential
 15 documents', if such documents exist, they could
 16 only be documents signed by individuals in their
 17 private capacity, and are not public records
 18 subject to disclosure under the Michigan Freedom of
 19 Information Act. The City of Detroit and its
 20 agents did not execute, participate, negotiate,
 21 possess, or was otherwise involved in any
 22 additional documents related to the settlement of
 23 Brown and Nelthrope versus City of Detroit and
 24 Harris versus City of Detroit."
 25 Is that a true statement, to your

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1 knowledge? You can answer yes or no.
 2 MS. HA: I'm going to object to Mr.
 3 Stefani's testimony --
 4 MR. FINK: (Interposing) I can show
 5 you a copy if you would like to see it.
 6 MS. HA: -- regarding what the city
 7 said. He can testify as to his opinion.
 8 MR. FINK: Ms. Ha, that's all I'm
 9 asking. Do you understand that?
 10 MS. MCPHAIL: He's asking his opinion
 11 whether something's true or not?
 12 MS. HA: I don't know.
 13 Q (Continuing by Mr. Fink) Here, what --
 14 A (Interposing) What am I reading, anyway? Is this
 15 a transcript?
 16 Q No. This is the city's response to my motion to
 17 expedite discovery.
 18 A Oh.
 19 MS. HA: You're asking the witness to
 20 answer what the city said?
 21 MR. FINK: Starting on --
 22 MS. HA: (Interposing) The document
 23 speaks for itself.
 24 MR. FINK: I want to know if he, to
 25 his knowledge, believes it's false. I have the

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1 right to ask that question.
 2 MS. HA: How would he know what's
 3 false -- what the city --
 4 MR. FINK: (Interposing) Oh, cut it
 5 out.
 6 MS. HA: -- said was false?
 7 MR. FINK: Cut it out. Let's not ask
 8 silly -- make silly statements.
 9 MS. MCPHAIL: Okay. Let's ask the
 10 judge. Excuse me, if we can for a moment. Let's
 11 just ask the judge if we can bring the deposition
 12 down to his chambers, because we're not going to
 13 take this kind of abuse during the deposition.
 14 A That's all I -- the only way I can answer this --
 15 answering whether I think it's true or false, you
 16 know, I would have to study it more carefully to
 17 formulate an opinion. But the -- we signed an
 18 agreement the day of the facilitation in my office.
 19 The facilitation --
 20 MS. HA: (Interposing) I'm going to
 21 object to any testimony about facilitation.
 22 A -- ended at four o'clock. We came back to my
 23 office, and we stayed here until eight thirty
 24 pounding out the terms of a document, and we signed
 25 that document.

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1 Q (Continuing by Mr. Fink) And did the city have a
 2 participation in that additional document?
 3 MS. HA: Are we talking --
 4 MR. FINK: (Interposing) The
 5 confidential document.
 6 Q (Continuing by Mr. Fink) Did the city's
 7 representatives --
 8 A (Interposing) Well, they signed it, and they --
 9 and they -- the terms were negotiated. The
 10 language was negotiated.
 11 MS. HA: Who signed it for the city?
 12 MR. FINK: Let me --
 13 MS. HA: (Interposing) What are you
 14 talking about?
 15 MR. FINK: You don't have the right
 16 to ask questions. You have the right to ask
 17 questions later.
 18 MS. HA: But are we talking about the
 19 Settlement Agreement, the Exhibit 4 and 5?
 20 MR. FINK: No, no. I'm asking -- I'm
 21 asking whether it -- this -- the city's statement
 22 basically says there are no confidential documents
 23 that the city was involved in.
 24 Q (Continuing by Mr. Fink) I'm asking, and I know
 25 I'm getting a little ahead of the story, but Mr.

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1 Stefani, was the city not involved in a negotiating
 2 or participating in a Confidentiality Agreement on
 3 October 17, 2007?
 4 A We signed an agreement in my office on that day,
 5 that was, I believe, entitled -- and you've all got
 6 it right in front of you. I believe it was
 7 entitled Settlement Agreement, but it had a
 8 confidentiality provision in it.
 9 Q Okay. And my answer -- or, my question is, the
 10 statement that the city was not involved in any
 11 additional documents relating to the settlement, is
 12 false then as it relates to the Confidentiality
 13 Agreement, correct?
 14 MS. HA: I'm going to object to that
 15 question, because he cannot answer what -- what --
 16 he cannot answer on behalf of the City of Detroit.
 17 The last I -- Mr. Stefani represented Mr. Harris,
 18 Mr. Brown, and Mr. Nelthrope. He did not represent
 19 the City of Detroit. He cannot testify whether or
 20 not -- what City of Detroit did. He is not an
 21 agent of City of Detroit.
 22 MR. FINK: Ms. Ha, you have there the
 23 document signed by --
 24 MS. HA: (Interposing) Well, then
 25 why don't you --

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1 MR. FINK: -- Ms. Colbert on behalf
 2 of the mayor and the City of Detroit. It's the
 3 first Settlement Agreement, because somebody tore
 4 up the first Settlement Agreement, except Mr.
 5 Stefani has produced it to us today, to defeat the
 6 Free Press' Freedom of Information Act request.
 7 The city was directly involved in all --
 8 orchestrating the entire coverup. So why don't we
 9 get it out on record, and then we'll -- we'll
 10 decide. You can argue all of these objections to
 11 the judge.
 12 MS. HA: Well, we need to take a
 13 break, because I'd like a moment to review it. I
 14 know that we were late, but I'd like to take a look
 15 at it.
 16 MR. FINK: Well, before you take your
 17 break, let's all know what page we're on. Mr.
 18 Stefani has produced a complete file which shows
 19 that there were two settlement agreements with
 20 confidentiality provisions; the first one which was
 21 signed by Ms. Colbert on behalf of both the city
 22 and the mayor was subsequently destroyed, then
 23 there was a later one, I believe dated November the
 24 1st, which was -- purports to be just between Kwame
 25 Kilpatrick and Mr. Stefani. So this was obviously

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1 a coverup. It is all going to come out now.
2 And Ms. Colbert's representation to the
3 judge on the record, I've ordered the transcript,
4 Friday morning that she had no knowledge of any
5 confidentiality provision, is a blatant falsehood.
6 But it will all come out --

7 MS. MCPHAIL: (Interposing) Mr.

8 Fink --

9 MR. FINK: -- so let's get it out.

10 MS. MCPHAIL: Excuse me. I'm not
11 objecting for the record here. I'm just confused
12 by what you're saying. You're saying that the
13 Settlement Agreement that is signed as of -- are
14 you referring to this one, the one that -- I can't
15 seem to see a date on here. Where's the date?

16 MR. FINK: October 17.

17 MS. MCPHAIL: Oh, okay. It says
18 October 17.

19 MS. HA: Wait. What page?

20 MS. MCPHAIL: Is the Settlement
21 Agreement -- it's up here, October 17.

22 MR. FINK: Why don't we do this
23 deposition in the normal fashion? I'll produce all
24 these, I'll ask the questions about it, and if you
25 folks stop interrupting the witness, we'll get it

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1 MS. HA: Well, and I'm just asking
2 can we have a few minutes --

3 MR. FINK: (Interposing) Yes.

4 MS. HA: -- to take a look at this
5 document?

6 A Yeah. I mean, I'm going to excuse myself for a
7 minute. I think it -- you know, it's hard enough
8 sitting through this deposition, without -- I mean,
9 without the bickering going on. And you did look
10 at it, and I think it would be unfair to expect her
11 to respond.

12 MR. FINK: I'm happy to let them look
13 at it.

14 A Unless she hasn't seen it before -- I mean, if she
15 hasn't seen it, then she needs to look at it.

16 MR. FINK: Well, sure, but Ms.

17 Colbert signed some of them. Sure, yeah.

18 (WHEREUPON A BRIEF PAUSE WAS HAD IN
19 THE PROCEEDINGS.)

20 MS. HA: Just so that -- I'd like
21 everyone, just so that I put this on the record, we
22 did have an opportunity to review the settlement --
23 the document entitled Settlement Agreement, which
24 is dated October 17th, 2007, which was the line of
25 questioning that Mr. Fink had prior to the break.

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1 all out, and you can argue to the judge whatever
2 you want to argue.

3 MS. MCPHAIL: Yeah. The only thing
4 I'm concerned about, honestly, is that he will
5 answer a question not knowing what you're talking
6 about. Because if the rest of us over here can't
7 figure out what you're talking about -- you know.
8 I know you know what you're talking about, but --

9 MR. FINK: (Interposing) He knows.
10 These documents were produced to me this afternoon
11 in connection with his deposition.

12 MS. MCPHAIL: Before we got here.

13 MS. HA: Well, I'm just asking for --

14 MR. FINK: (Interposing) Well, you
15 were an hour late.

16 MS. MCPHAIL: I know.

17 MR. FINK: Yeah. He gave them to me
18 at two o'clock and I went and started going through
19 them so that I could better prepare.

20 MS. MCPHAIL: Okay.

21 MR. FINK: You could have had the
22 same thing if you'd been here.

23 MS. MCPHAIL: We were here --

24 MR. FINK: (Interposing) One
25 o'clock. I'm sorry, not two o'clock, one o'clock.

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1 In reviewing the document, it's -- this is
2 a draft document, a tentative agreement that was to
3 memorialize what the parties had discussed at the
4 facilitation. And the contents of this October 17,
5 2007 document, is what was finally merged into the
6 official settlement doc -- settlement and
7 agreement, which was executed by the respective
8 parties, Mr. Brown, and Mr. Nelthrope, and Mr.
9 Harris. So just so that everyone in this room
10 understands that.

11 MR. FINK: Okay.

12 Q (Continuing by Mr. Fink) All right. Mr. Stefani,
13 I'm going to hand you copies marked as exhibits of
14 all of the documents that you produced to me today.
15 And if you'll give me one second, for some reason
16 they seem to be out of order. I want to get my
17 copy, which of course I'll turn in to you at the
18 end of the day. But I -- to ask you some
19 questions, I just want to make sure I've got them
20 in the right order, so I refer to the right
21 numbers.

22 (WHEREUPON A DISCUSSION WAS HAD OFF
23 THE RECORD.)

24 Q (Continuing by Mr. Fink) All right. Mr. Stefani,
25 I'm going to hand you back now, with exhibit

1 stickers, the documents that you produced for this
2 deposition. And I'm going to briefly go through
3 each, and then I'm going to ask you more specific
4 questions about each.

5 Document Number 8, for starters --

6 MS. HA: (Interposing) I thought we
7 were on Exhibit Number 6.

8 MR. FINK: Yeah. Well, there's some
9 I'm not going to go through, so I'm just not going
10 to use those.

11 MS. HA: Okay.

12 MR. FINK: I had them marked in
13 advance.

14 MS. HA: Oh, I see.

15 MR. FINK: But they're preliminary
16 kind of documents, so let's just get to the meat of
17 this, which is what we're doing now.

18 Q (Continuing by Mr. Fink) Now, Number 8 appears to
19 be, and I'm going to ask you some questions, but
20 just as a preliminary matter, it looks like this is
21 a document signed by Mayor Kilpatrick, in which he
22 appoints William Mitchell, III, as his
23 representative for purposes of receiving records
24 under the Confidentiality Agreement, correct?
25 That's what it says?

1 A Yes.

2 Q Okay. Those records referred to in Exhibit Number
3 8, were the text messages, is that correct, that
4 are now the subject of some notoriety, correct?

5 A Correct.

6 Q All right. So the mayor, or I should say Kwame
7 Kilpatrick, authorized William Mitchell on November
8 1, to hold the text messages, is that correct?

9 MS. HA: Well, objection --

10 MR. FINK: (Interposing) Or to
11 receive them?

12 MS. HA: -- as to foundation. Mr.
13 Stefani cannot testify as to what the mayor -- or,
14 what Mr. Kilpatrick did or not.

15 Q (Continuing by Mr. Fink) Is that your
16 understanding of --

17 MS. HA: (Interposing) That is not a
18 proper question.

19 Q (Continuing by Mr. Fink) Is that your
20 understanding of what this -- this agreement or
21 this document signed by Mayor Kilpatrick was to
22 accomplish?

23 A Yes. But it wasn't signed on November 1st, as far
24 as I know, because we actually signed up some of
25 these documents I believe on December 5th. And

1 this was not one of them, because the mayor's
2 designee had not been chosen at that point.

3 Q What do you understand the purpose was of Exhibit
4 8?

5 A Well, there was certain documents were to be held
6 in escrow.

7 Q And those were the text messages?

8 A The text messages and some documents that related
9 to matters of my client. So this -- this
10 designation form refers to them as "K/B records".
11 Those are the text messages. I believe there's
12 also in the confidentiality -- a second -- or, the
13 document entitled Confidentiality Agreement,
14 there's a reference to the -- probably
15 Brown/Nelthrope or B and N documents.

16 Q Yep.

17 A And the escrow agreement called for all those
18 documents to be put in escrow. Well, they had been
19 put in escrow a long time before that. But the
20 escrow agreement provided that when the matter was
21 fully resolved, approved by the city council, the
22 money was paid, those documents would be released
23 from escrow to the mayor's designee. And we didn't
24 know who the mayor's designee was when we signed
25 the escrow agreement, nor did we know who the

1 mayor's designee was on the -- I believe the 12th
2 of December, when we signed the second Settlement
3 Agreement or Exhibit 5.

4 So this was sent to me, or I -- I believe
5 I received this in the mail a couple of days later,
6 naming William Mitchell as the designee.

7 Q Okay. And the escrow agreement you reference,
8 would be Exhibit 14 and 15, is that correct?

9 A Let's see. Yes.

10 Q All right. Now, Exhibit 14 and 15 relate to a
11 safety deposit box in which -- and I'll ask you if
12 this is correct, in which the confidential records,
13 including the text messages, were to be placed?

14 A That's correct. And I believe -- that's correct.

15 I believe that was spelled out or alluded to in the
16 October 17th agreement, but I'm not certain.

17 Q Okay. We'll get to that. And your understanding
18 was that, if I'm reading this correctly quickly,
19 that you and Mr. McCargo would have keys to the
20 safety deposit box, and both of you would need to
21 be present to withdraw these confidential
22 documents, including the text messages?

23 A Originally that was our understanding. But when we
24 opened the box, we were told that they couldn't
25 require two people to have the keys at the same

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1 time, that they would be obligated to open the box
2 if either one of us showed up with the key. And I
3 believe that is why the second escrow agreement,
4 which you --
5 Q (Interposing) The supplemental escrow agreement,
6 Exhibit 15?
7 A I believe that's why we did it.
8 Q Okay.
9 A Because -- but eventually the bank changed its mind
10 and said we can allow -- we can have a policy that
11 the box will not be opened in the absence of both
12 of you; and so as it turned out, our final escrow
13 agreement reflected our original intent, but there
14 was a little hiccup in between.
15 Q Let me invite your attention now to what's been
16 marked as Exhibit Number 9, which is captioned
17 "Notice of Mayor Kwame Kilpatrick's Approval Of
18 Terms And Conditions Of Settlement As Approved By
19 The City Council On October 23, 2007."
20 What was your -- what is your
21 understanding of the purpose of that document?
22 A Well, the -- as Ms. Ha has pointed out, the
23 agreement entitled Settlement Agreement in
24 general -- or, Settlement Agreement, executed by
25 all of us on the 17th of October, it was a

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1 contract, but it was a contract with a condition
2 precedent in it. And the condition precedent was
3 that Brown and Nelthorpe had so many -- and Harris
4 had so many days to approve this settlement, and
5 the mayor had so many days, and the City of Detroit
6 had so many days to approve this settlement.
7 This document, Number 9, I believe I also
8 received this after the 5th of December, was the
9 mayor's official notification that he rejected the
10 settlement.
11 Q Well, this one is an acceptance. Are you referring
12 to Exhibit Number 10, which is his rejection?
13 A Correct. I misspoke. Yes.
14 Q Okay. Now, you referenced a Settlement Agreement.
15 Is that Exhibit 11? We're talking about the
16 October 17, 2007 Settlement Agreement, Exhibit 11?
17 A That's the agreement that I referenced that we all
18 signed in my office on October 17th. It is --
19 apparently in the -- in the exhibit that rejects
20 the Settlement Agreement from Mayor Kilpatrick,
21 he's referring to this conditional Settlement
22 Agreement of October 17th. And the one where --
23 that he's notifying me of his acceptance, in there
24 he's referring to the Settlement Agreement that is
25 dated November 1st, 2007.

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1 Q All right. So let's get the time line straight. I
2 think you've said it clearly, but let's get the
3 time line straight. We have Exhibit 11, which is a
4 fully-executed Settlement Agreement on October 17,
5 2007?
6 MS. HA: I object to the
7 characterization of that --
8 MR. FINK: (Interposing) Okay, fine.
9 MS. HA: -- question.
10 Q (Continuing by Mr. Fink) Now, that is signed by
11 Mr. McCargo and Ms. Colbert on behalf of Mr. Kwame
12 Kilpatrick. It's signed by the City of Detroit,
13 signed also by Ms. Colbert, and I can't read the
14 other signature.
15 A That's Mr. Copeland.
16 Q Mr. Copeland. Okay.
17 A I believe.
18 Q And then you sign it on behalf of all three
19 plaintiffs?
20 A Correct.
21 Q Okay.
22 A Yeah.
23 Q So we've got that three --
24 A (Interposing) And it's also signed, I believe, by
25 Frank Rivers. We both signed it on behalf of all

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1 the plaintiffs. Frank Rivers and I.
2 Q Oh, okay.
3 A We were co-counsel.
4 Q His signature's under yours?
5 A I believe so, yes.
6 Q I can't quite make it out.
7 All right. Now, then we go to Exhibit 10,
8 which is dated October 27, which is the Mayor Kwame
9 Kilpatrick's rejection, Exhibit 10, correct?
10 A Correct.
11 Q Why did he -- what is your understanding of the
12 reason he rejected Exhibit Number 11?
13 A Well, I think he didn't -- first of all, he
14 didn't -- he didn't --
15 MS. HA: (Interposing) You know, I'm
16 going to object to him --
17 A (Interposing) I never spoke to him about it.
18 Q (Continuing by Mr. Fink) Okay. What is your
19 understanding? What do you understand took place
20 here between October 17 and October 27?
21 A The Free Press filed a Freedom of Information Act.
22 And I'm presuming, but don't know for a fact, that
23 they -- that is, Mayor Kilpatrick and perhaps
24 Beatty, did not --
25 MS. HA: (Interposing) I'm going to

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1 object to this as to foundation.
 2 A -- want the reference to the text messages in the
 3 Settlement Agreement.
 4 Q (Continuing by Mr. Fink) Now, going back to
 5 Exhibit Number 11, the October 17, fully-executed
 6 agreement, in the first paragraph it refers to --
 7 specifically to your surrender of and transfer to
 8 an attorney to be designated by the mayor, we know
 9 later that was Mr. Mitchell, "All records,
 10 originals and copies, of text messages from SkyTel
 11 Messaging for the text pager leased by the City of
 12 Detroit and issued to Christine Beatty for the
 13 periods of September through October, 2002, and
 14 April through May, 2003 ('Records')." Correct?
 15 A Yes.
 16 Q So your understanding was that the representatives
 17 of the city and the mayor decided to avoid and
 18 evade the Detroit Free Press' Freedom of
 19 Information Act request which you previously saw as
 20 dated on the 19th of October, that they then
 21 entered into -- they rejected after the fact this
 22 Settlement Agreement Exhibit 11, and entered into a
 23 new one, is that correct?
 24 MS. HA: Objection, foundation,
 25 argumentative.

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1 MR. FINK: Argumentative? Okay.
 2 Q (Continuing by Mr. Fink) Is that right? Is that
 3 your understanding?
 4 A I'm sorry. That was kind of a long question.
 5 Q I know.
 6 A And you might have had some adjectives or adverbs
 7 in there that I cannot agree with. But I will tell
 8 you my understanding.
 9 Q Please.
 10 A Was that the reason that they didn't want to --
 11 they -- they rejected the October 17th Settlement
 12 Agreement, was that they had received a Freedom of
 13 Information Act, and it dawned on somebody that
 14 they didn't want the text messages referenced in
 15 the Settlement Agreement, so they'd have to
 16 separate it out into a separate Confidentiality
 17 Agreement and a separate Settlement Agreement.
 18 And if I might add further,
 19 confidentiality agreements are used all the time in
 20 settlements. And -- but between private parties,
 21 you don't -- you don't think of the Freedom of
 22 Information Act. It's not applicable. So, you
 23 know, when we signed this thing, it was on our
 24 understanding that these things would be kept
 25 confidential.

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1 Q Okay. Now --
 2 MS. HA: (Interposing) I'm going to
 3 move to strike Mr. Stefani's deposition.
 4 MR. FINK: Well, okay.
 5 MS. HA: I mean, not deposition, but
 6 his -- well, I might as well. I'm going to move to
 7 strike his deposition testimony.
 8 MR. FINK: Of course you are.
 9 MS. HA: And I'm going to move to
 10 strike his answers to the question that I objected
 11 to --
 12 MR. FINK: (Interposing) Okay.
 13 MS. HA: -- Mr. Fink.
 14 Q (Continuing by Mr. Fink) Okay. So, Mr. Stefani,
 15 on October 17 we have everyone execute Exhibit 11,
 16 the Settlement Agreement which makes direct
 17 reference to turning over the SkyTel text messages
 18 to the mayor's and the city's representatives?
 19 MS. HA: I'm going to object.
 20 Q (Continuing by Mr. Fink) Then we have a Freedom of
 21 Information Act request served by the Detroit Free
 22 Press two days after October -- on, on October 19.
 23 So as of October 19 -- now, note that Exhibit 10 is
 24 the rejection, which is dated October 27. So on
 25 October 19, this was -- Exhibit Number 11 was still

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1 a city document, correct?
 2 MS. HA: Objection. Foundation. Mr.
 3 Stefani cannot answer on behalf of the City of
 4 Detroit.
 5 Q (Continuing by Mr. Fink) Is that your
 6 understanding, Mr. Stefani?
 7 A I can tell you that --
 8 MS. HA: (Interposing) Same
 9 objection.
 10 A -- that, as I said before --
 11 (WHEREUPON AN INTERRUPTION WAS HAD IN
 12 THE PROCEEDINGS, AND VALERIE
 13 COLBERT-OSAMUEDE, ESQ., LEFT THE
 14 DEPOSITION ROOM.)
 15 Q (Continuing by Mr. Fink) Finish your statement, so
 16 we can at least have it. We were asking about --
 17 A (Interposing) We operate -- this Settlement
 18 Agreement that has the condition precedent in it,
 19 was followed by the parties as if it were going to
 20 be approved by all of the parties, and we treated
 21 it as binding. That's why I actually turned over
 22 the documents long prior to --
 23 Q (Interposing) By documents we're talking about the
 24 text messages?
 25 A The text messages.

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1 Q Um-hum (affirmatively).
 2 A Long -- and that's why they went to escrow long
 3 prior to the new Settlement Agreement. But the
 4 mayor had the right to reject this, which --
 5 which --
 6 Q (Interposing) which he did on October 27?
 7 A Well, I told you, I didn't get that letter I think
 8 until October 5th, but -- I mean until December
 9 5th.
 10 Q Okay. All right.
 11 A But in any event, he had the right to reject it.
 12 MR. FINK: All right. Go ahead, take
 13 the phone call, and then we'll get back to all of
 14 this interesting information.
 15 (WHEREUPON A BRIEF PAUSE WAS HAD IN
 16 THE PROCEEDINGS, FOR A
 17 TELECONFERENCE AS FOLLOWS, AND
 18 VALERIE COLBERT-OSAMUEDE RE-ENTERED
 19 THE DEPOSITION ROOM.)
 20 MS. COLBERT-OSAMUEDE: He wants you
 21 to put this on a conference call.
 22 A Hello.
 23 JUDGE COLOMBO: Hello. This is Judge
 24 Colombo.
 25 A This is Mike Stefani, your Honor. And I'm just

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1 putting the phone on the table so everybody can get
 2 to it.
 3 JUDGE COLOMBO: Okay.
 4 MR. FINK: We're all here, your
 5 Honor. We hear you.
 6 JUDGE COLOMBO: I got a call from Ms.
 7 Colbert-Osamuede, a call to call at 3:45.
 8 MR. FINK: News to me.
 9 MS. HA: Your Honor, this is Ellen Ha
 10 on behalf of the City of Detroit.
 11 We made the call to you because there is
 12 some testimony that came out during Mr. Stefani's
 13 deposition pertaining to the facilitation. And we
 14 made it clear before Mr. Stefani could answer the
 15 question, that Mr. Fink and I had had an
 16 understanding with you in chambers that no line of
 17 questioning was going to be pursued regarding the
 18 facilitation/mediation, pursuant to the Michigan
 19 Court Rules.
 20 MR. FINK: Can I respond, your Honor?
 21 JUDGE COLOMBO: Yes.
 22 MR. FINK: It's Herschel Fink, your
 23 Honor.
 24 You may recall Friday afternoon, while Ms.
 25 Ha and I were in your chambers, and in fact we

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1 already were leaving when a messenger brought a
 2 document to Ms. Ha. I did not see that document
 3 until Monday. She then raised with you verbally a
 4 concern about the mediation rule. And what I said
 5 to you was, I'm not concerned about things that
 6 happened three years ago, thinking we were talking
 7 about a mediation or a...
 8 A Case evaluation?
 9 MR. FINK: A case evaluation. And I
 10 said I don't intend to ask any questions about
 11 that, I'm interested in what happened at the
 12 settlement.
 13 Subsequently, on Monday, I saw the
 14 document she was referring to. I don't believe you
 15 saw it either.
 16 JUDGE COLOMBO: I saw it. I knew
 17 exactly what she was talking about.
 18 MS. HA: Well --
 19 MR. FINK: (Interposing) Well, I
 20 didn't. But let me just respond, your Honor. That
 21 rule, to the extent it even applies, talks about
 22 statements. Mr. Stefani was talking about actions
 23 that occurred there, which is, to use my
 24 characterization, I realize it's argumentative, was
 25 the coverup. There is, of course, a crime/fraud

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1 exception and a public policy exception even to
 2 attorney/client privilege.
 3 My -- my request would be we put this all
 4 on the record. It's sealed, and you'll make a
 5 determination whether this was potentially a fraud
 6 and a crime, or otherwise not subject to that court
 7 rule.
 8 MS. HA: But, your Honor, you already
 9 ruled on Friday that we were not to pursue any
 10 questions regarding facilitation. I don't think
 11 Mr. Fink can request that your Honor now carve out
 12 an exception to the facilitation/mediation rule.
 13 MR. FINK: All I'm suggesting is,
 14 your Honor, you'll have all the facts and the
 15 documents on the record sealed in front of you.
 16 You'll make the determination. You'll hear
 17 argument. I'm sure that they'll tell you that it
 18 shouldn't be released because it's subject to that
 19 rule. You need to know what all the facts are
 20 first. And it will all be on the record. It will
 21 all be sealed. You'll have it tomorrow. And then
 22 you can make a determination whether maybe this
 23 just might be covering up a fraud and a crime and
 24 is an exception.
 25 MS. HA: But again, your Honor, the

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1 motion was delivered to your attention on Friday.
 2 Both Mr. Fink and I reviewed the motion --
 3 MR. FINK: (Interposing) I did not.
 4 MS. HA: -- for protective order
 5 together.
 6 MR. FINK: I didn't. I did not.
 7 MS. HA: And your Honor then
 8 indicated to us in chambers that you did review the
 9 motion, and that facilitation/mediation was not
 10 going to be pursued.
 11 And I might add, your Honor, that
 12 indicated to Mr. Fink that he is well aware of Mr.
 13 Fink's reputation, and that it is this Court's
 14 understanding, as well as the City of Detroit's
 15 understanding that the line of questioning
 16 regarding facilitation will not take place in the
 17 deposition.
 18 MR. FINK: Your Honor, may --
 19 JUDGE COLOMBO: (Interposing) Okay.
 20 wait a second. Wait a second. Let me set the
 21 record exactly of what happened, because I remember
 22 this vividly.
 23 You had come in, you had left. There was
 24 some discussion about the order when this new
 25 motion comes in that basically seeks to prohibit

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1 any discussions regarding the facilitation that
 2 occurred I believe it was in October of 2007, after
 3 this trial.
 4 And so I reviewed the motion. And we had
 5 a discussion about it. And I pointed it out that
 6 I'm fairly familiar with this rule, because I'm
 7 sitting on a committee that is considering
 8 amendment of the mediation rule, or they call it
 9 mediation, now it's 2.410, I believe -- or, 2.409.
 10 And I said, this stuff that occurred in
 11 facilitations or mediations, is not supposed to be
 12 disclosed. And -- and Mr. Fink did say he wouldn't
 13 disclose it. Now he says he didn't read the
 14 motion, and he didn't understand that it dealt with
 15 the facilitation that occurred in October; he
 16 thought it was referring apparently to a case
 17 evaluation that was done on the case some time ago.
 18 So we did have that agreement that this would not
 19 be inquired into on the record. Now apparently
 20 someone wants to ask some questions about it.
 21 MS. HA: It already happened, your
 22 Honor.
 23 JUDGE COLOMBO: So the questions have
 24 already happened?
 25 MS. HA: Yes, your Honor.

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1 JUDGE COLOMBO: And have they been
 2 answered?
 3 MS. HA: Yes, your Honor, contrary to
 4 our objection -- or, my objections, your Honor.
 5 JUDGE COLOMBO: Okay. Then what are
 6 we -- there's nothing to talk about. At this point
 7 in time, it's going to be part of a sealed record.
 8 We'll have to argue about whether or not there is
 9 a -- a privilege there. And since it's happened,
 10 there's really nothing further to discuss. It's
 11 already in the record, so...
 12 MS. HA: Well, your Honor --
 13 JUDGE COLOMBO: (Interposing) All I
 14 can tell you, is that as long as you objected, I
 15 don't consider it -- I don't consider there would
 16 be a waiver.
 17 And I am unhappy about this, Mr. Fink.
 18 Frankly, I expect if I have enough time on a very
 19 busy day on Friday to read that motion, I would
 20 have thought that you would have had enough time to
 21 read that motion and understand exactly what the
 22 motion was about. Because we all understood, at
 23 least Ms. Ha and I understood exactly what the
 24 issue of the motion was. So I'm unhappy about
 25 that, that you're now claiming you didn't

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1 understand the issue.
 2 MR. FINK: May I try to refresh the
 3 court's recollection that I said I'm not interested
 4 in things that happened three years ago, I want to
 5 know what happened at the settlement. I didn't
 6 read it, because I wasn't even given a copy of it
 7 until it arrived at my office on Monday, your
 8 Honor. It was walked into chambers as we were
 9 walking out. Ms. Ha looked at it, gave it to you.
 10 I never had it. And I expressly, you may remember,
 11 said I'm not interested in things that happened
 12 three years ago.
 13 I was in good faith. I would never
 14 misrepresent any such thing to the Court. That's
 15 what I believed that was all about. It wasn't
 16 shown to me. And you may remember, I said I wasn't
 17 interested in things that happened three years ago.
 18 JUDGE COLOMBO: Well, I do vaguely
 19 remember that. But I still felt that there was an
 20 understanding that there would be no discussion
 21 with respect to settlement conferences. And I
 22 think you should have raised that issue with me, in
 23 light of our agreement, before you proceeded on
 24 your own to make that determination. And I find
 25 that objectionable.

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1 MR. FINK: I apologize to the Court.
 2 JUDGE COLOMBO: Okay.
 3 MS. HA: Your Honor, this is --
 4 JUDGE COLOMBO: (Interposing) I
 5 mean, to me, the appropriate thing to do is, if
 6 there's any question about an issue like that, is
 7 to address it with me first, and not make the
 8 unilateral decision to proceed.
 9 MR. FINK: I understand, your Honor.
 10 And just because this was all in a sealed record
 11 that you would make a determination on, I felt that
 12 there was no harm, particularly when I looked at
 13 the documents and saw that this is all wrapped up
 14 in the rubric of this facilitation. And I think
 15 you'll understand what happened when you look at
 16 it.
 17 JUDGE COLOMBO: Okay. In any event,
 18 is there anything else I need to take up?
 19 MS. HA: Yes, your Honor. I would
 20 like an order that no further questions from Mr.
 21 Fink be pursued or Mr. Stewart, although Mr.
 22 Stewart hasn't had the opportunity, regarding the
 23 facilitation.
 24 Secondly, I am requesting whether we --
 25 the City of Detroit can ask questions, based on Mr.

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1 Fink's already asked questions regarding the
 2 facilitation.
 3 JUDGE COLOMBO: Here's my feeling
 4 about this. It's already occurred. We might as
 5 well get the complete record made. It makes
 6 absolutely no sense to me now to limit questions in
 7 this regard. It is a sealed record. There is no
 8 waiver as far as I'm concerned, and consequently I
 9 want all questions asked that relate to this
 10 facilitation now.
 11 MR. FINK: Thank you, your Honor.
 12 MS. HA: Thank you, your Honor.
 13 JUDGE COLOMBO: Okay. Bye.
 14 MR. FINK: Bye.
 15 (WHEREUPON THE TELECONFERENCE
 16 CONCLUDED AND THE PROCEEDINGS
 17 CONTINUED AS FOLLOWS:)
 18 Q (Continuing by Mr. Fink) Okay. All right. Do you
 19 need a break?
 20 A No.
 21 Q Okay.
 22 A I need about a year off. But go ahead, go ahead.
 23 I will say this, I've sat through so many
 24 depositions --
 25 MR. FINK: (Interposing) Wait.

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1 We're back now.
 2 A -- with the city where -- no, let's go onto...
 3 Q (Continuing by Mr. Fink) No, we are.
 4 A I'm glad to be more or less a neutral observer.
 5 But...
 6 Q Okay.
 7 A It still gives me a headache.
 8 Q All right. So just getting back to this time line,
 9 we have the Exhibit 11, the October 17th Settlement
 10 Agreement, we have the Detroit Free Press October
 11 19 Freedom of Information Act request, which was --
 12 anybody know the number?
 13 MR. STEWART: Yep.
 14 MS. HA: Exhibit...
 15 MR. STEWART: 3, I think. Just a
 16 minute.
 17 A Yeah, that's one. October 19th, 2007.
 18 MR. STEWART: It's Exhibit 1.
 19 MR. FINK: Exhibit 1. Okay.
 20 Q (Continuing by Mr. Fink) We have, although you
 21 thought it might have actually been later, at least
 22 you learned of it later, we have the Exhibit 10, in
 23 which the mayor rejects the settlement terms or
 24 rejects the settlement dated October 17. Exhibit
 25 10 is dated October 27. And then we have Exhibit

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1 9. And let me ask you about that. I think we were
 2 just maybe starting to ask about Exhibit 9.
 3 Now, Exhibit 9 you understand to be Mayor
 4 Kilpatrick's acceptance of the settlement -- of a
 5 settlement? We'll get to which one it was in a
 6 minute.
 7 A Um-hum (affirmatively).
 8 Q Is that correct?
 9 A Yes, correct.
 10 Q Okay. And that would be Exhibit 12, correct? Is
 11 that what he's referring to in Exhibit 9?
 12 A Yes.
 13 Q Okay. To your knowledge, was the city council
 14 advised ever of Exhibit 11, the Settlement
 15 Agreement that references the text messages?
 16 A I had no knowledge of that.
 17 Q Okay. I suppose the council will speak for itself
 18 on that issue.
 19 Now, let me ask you about Exhibit 13 which
 20 you produced today. That also is captioned
 21 Confidentiality Agreement, and it is, by its own
 22 term, effective November 1, 2007. Tell me -- now,
 23 let's -- let's talk about who was a party to
 24 Exhibit 13, and then I'm going to ask you what you
 25 know about how that came about.

1 Now, that document is signed on the last
2 page, Page 9, by Brown, Nelthrope and Harris; by
3 you, and on their behalf; and you, yourself, on
4 behalf of your firm. And then it's signed by --
5 all of a sudden we don't see the name mayor, it's
6 just Kwame Kilpatrick and Christine Beatty, who
7 wasn't even a party in your lawsuit, is that
8 correct?
9 A No.
10 Q Ms. Beatty was not --
11 A (Interposing) No, she was not a party.
12 Q She wasn't a party. Now, the first paragraph of
13 Exhibit 13 talks about the parties who entered into
14 this agreement, Number 13, the Confidentiality
15 Agreement. And it describes them, among others, as
16 Kwame Kilpatrick individually and personally, and
17 Christine Beatty individually and personally?
18 MS. HA: Can I just ask what page are
19 you on?
20 MR. FINK: I'm on the first page, the
21 first paragraph I said.
22 MS. HA: Thank you.
23 Q (Continuing by Mr. Fink) Could you explain, first
24 of all, how -- why Ms. Beatty suddenly becomes a
25 party to a Confidentiality Agreement in this case?

1 MS. HA: Objection, foundation.
2 A The records were -- the text messages were of Ms.
3 Beatty's text messaging machine. They were
4 messages either sent by her or to her. And she
5 obviously had a vested interest in keeping those
6 records personal or confidential.
7 Another thing is that I requested a
8 release from Ms. Beatty as part of the overall
9 Settlement Agreement. And I believe that is
10 reflected in Exhibit -- the document we signed in
11 my office on the 17th of October. I believe in
12 there I make -- or, I inserted that releases would
13 be entered by all the parties, plus I thought I
14 said Christine Beatty. But obviously the document
15 speaks for itself.
16 Q (Continuing by Mr. Fink) Going back to Exhibit 13,
17 this Confidentiality Agreement signed by Kwame
18 Kilpatrick and Christine Beatty, whose idea was it
19 to draft this document, as far as you know?
20 MS. HA: Objection, foundation.
21 A I don't know. I don't know that.
22 Q (Continuing by Mr. Fink) Was it -- okay. Was it
23 your idea?
24 A No.
25 Q Who presented it to you for signature?

1 A We had -- on I believe it was December 5th, we had
2 a closing on these documents. And present at that
3 closing -- it was in Mr. Wilson Copeland's office.
4 I was present representing the plaintiffs, Brown,
5 Nelthrope and Harris. And I believe Ms. Osamuade,
6 McCargo, Copeland, and perhaps a paralegal. I
7 think one of the city's paralegals. I forgot. I
8 may be wrong on that. Those people were there for
9 sure, and there may have been a paralegal or two
10 there also.
11 Q Now --
12 A (Interposing) And these documents are what we --
13 you know, we had reviewed these documents ahead of
14 time, passed them back and forth. And essentially,
15 13 was supposed to incorporate the confidentiality
16 provisions of 11, the original conditional
17 Settlement Agreement, and then we tweaked the
18 language. The mayor -- or, it was suggested that
19 it encompass the documents that Brown and Nelthrope
20 wanted back from the city that they considered to
21 be of a confidential nature.
22 Q So am I correct in assuming that everyone present
23 at that meeting, who you just identified, was aware
24 of Exhibit 13 --
25 MS. HA: (Interposing) Objection,

1 foundation.
2 Q (Continuing by Mr. Fink) -- the Confidentiality
3 Agreement?
4 A I can't -- I can't say that. From the beginning,
5 all the way back to October 17th when the -- when
6 the city and all their attorneys said we will not
7 negotiate a global resolution is the word we used
8 to this case, I said, well, in that case I won't
9 accept the four hundred or five hundred thousand.
10 And then I asked the facilitator in
11 private if he would furnish Mr. McCargo only with a
12 motion that I had prepared for attorney's fees,
13 which referenced the con -- the text messages. And
14 I do not know whether Ms. Osamuade or Mr. Copeland
15 ever saw the text messages. I -- well, I'm not
16 going to guess.
17 And I really don't know whether they ever
18 saw this Confidentiality Agreement. They were in
19 the room when it was signed, but I'm not sure --
20 you know, they gave these documents to me to be
21 signed, and I signed them. They didn't come from
22 Ms. Osamuade. They came from McCargo. Whether
23 they were aware of this document or not, I can't
24 say.
25 Q Now, Ms. Osamuade, to your knowledge, was aware of

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1 the text messages, because it's referenced in the
2 October 17th Settlement Agreement that she signed,
3 correct?

4 MS. HA: Objection, foundation. Mr.
5 Stefani cannot answer for Ms. Osamuede.

6 (WHEREUPON SHARON MCPHAIL, ESQ.,
7 LEFT THE DEPOSITION ROOM.)

8 Q (Continuing by Mr. Fink) Correct, sir?

9 A I believe -- I believe she was aware that there
10 were text messages. I don't believe she -- at
11 least I have no reason to believe that she was
12 aware of the context of those messages. I think
13 McCargo told me, and I'm going by memory --

14 MS. HA: (Interposing) Objection,
15 hearsay.

16 Q (Continuing by Mr. Fink) Go ahead.

17 A I think he said --

18 MS. HA: (Interposing) Move to
19 strike.

20 A -- that Mr. Copeland and Ms. Osamuede were not
21 going to review the specifics of my motion, but
22 they were aware that I was going to file a motion.

23 Q (Continuing by Mr. Fink) All right. So let's --
24 we're clear on the record, the motion was what you
25 referred to a minute or two ago, a motion for

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1 about is a motion that was submitted to the
2 facilitator during facilitation, right?
3 A I handed it to the fac -- it wasn't really part of
4 the facilitation. I handed it to him when it
5 appeared the facilitation broke down and we weren't
6 going to resolve the attorney's fee issue. And we
7 were really kind of preparing to leave. And I
8 said, "Would you please give this to Mr. McCargo,
9 and -- but give it only to him", I said.

10 Q (Continuing by Mr. Fink) This was a document you
11 intended to file in the circuit court with Judge
12 Callahan, correct?

13 A Absolutely.

14 Q Okay. Now, after Mr. McCargo received this
15 document, what then transpired with regard to the
16 mayor's acceptance of the settlement?

17 MS. HA: Objection, foundation.

18 Q (Continuing by Mr. Fink) Or the mayor's settlement
19 of the case. What can you --

20 A (Interposing) Forty-five minutes after the
21 facilitator handed McCargo the document, there was
22 a knock on our door. We were in separate rooms.
23 And the facilitator said, "McCargo wants to talk to
24 you." And I got outside -- he was actually outside
25 of the building. So I left the building and walked

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1 attorney's fees?

2 A Supplemental motion for attorney's fees.

3 Q Okay. You had prepared that document, correct?

4 A Correct.

5 Q And in it, am I correct that there was a reference
6 to these text messages and perhaps an excerpt in
7 this motion?

8 A Oh, it was extensively excerpt -- extensively
9 excerpted with the areas -- the basis of the motion
10 was that we should get additional attorney's fees,
11 because the mayor and Beatty perjured themselves.
12 And I set out extensive examples in the -- of the
13 text messages in that motion. And that's what I'm
14 saying. McCargo read it, read it carefully. He
15 took about forty-five minutes to read it. But I
16 don't think Ms. Osamuede ever -- at least I -- I
17 have no reason to believe she read it.

18 MS. HA: Then how --

19 A (Interposing) In fact, I have the opposite.

20 Q (Continuing by Mr. Fink) Okay.

21 A McCargo said he wasn't going to share it with her
22 or Copeland.

23 Q Okay. Then --

24 MS. HA: (Interposing) Just so that
25 the record is clear, this motion that we're talking

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1 out in the parking lot. And McCargo looked ashen
2 or shook up. And he looked at me, and he said, "I
3 had no idea" --

4 MS. HA: (Interposing) Objection.

5 A -- "about these. Have you filed it with the
6 Court?" And I said, "No, I haven't filed it yet,
7 but I'm going to do that tomorrow." And he said,
8 "Give me some time." And a few minutes went by.
9 He called back, he says, "Boy, I was lucky. I got
10 the mayor right at the airport." And he said, Mr.
11 So and So, who is the head of the legal
12 department --

13 Q (Continuing by Mr. Fink) John, is it Johnson?

14 A "Is on his way down here." And when he got down
15 there, McCargo -- we all started negotiating more
16 seriously a global solution. And that's where I
17 ended up discounting the fees by nine hundred
18 thousand dollars and we resolved the case.

19 Q So Mr. Johnson, the corporation counsel of the City
20 of Detroit, was then involved in this resolution
21 after Mr. McCargo learned of the text messages,
22 correct?

23 MS. HA: Objection, foundation.

24 A He came to the facilitation, introduced himself,
25 was extremely pleasant. But we were in two

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1 separate rooms, so I don't know what they told him.
2 But in response to McCargo's call to the
3 mayor, Mr. Johnson came down to the fac -- if
4 that's his name, Mr. Johnson, came down to the
5 facilitation, and then we went in separate rooms
6 and we never talked to each other again. We just
7 like passed notes through the facilitator.

8 Q (Continuing by Mr. Fink) Thank you. Just so we
9 can clean this up, you also gave me a package of
10 checks which I marked as Exhibit 16, which you have
11 there.

12 A Yes.

13 Q Okay. And do I understand that there were separate
14 checks drawn for different types of injuries? Is
15 that the reason we have multiple checks?

16 A That's not the reason we have multiple checks.

17 (WHEREUPON SHARON MCPHAIL, ESQ.,
18 RE-ENTERED THE DEPOSITION ROOM.)

19 A But the part of the settlement -- the tentative
20 conditional Settlement Agreement, is that we would
21 allocate the settlement among several different
22 categories; past wages, future wages, past pension,
23 future pension, emotional damage and physical
24 injury. And that is the way we did it. But I
25 don't think those bear -- well, they might bear a

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1 able to identify.

2 A Yes.

3 MS. HA: Is this Exhibit 17?

4 MR. FINK: 17 is what I marked it.

5 A Yeah. Page 2 and Page 3 of 17 are a letter from me
6 to Ms. Colbert-Osamuede, dated November 1st, 2007,
7 in which we set forth the break-down of how the
8 party -- or, the plaintiffs allocated the
9 settlement proceeds.

10 And I should point out, and I'd like to
11 point out anyway, that you notice on here Stefani
12 and Stefani has a rather large figure. But that
13 doesn't necess -- these figures don't necessarily
14 mean they -- some of these figures -- some of the
15 payment to Stefani and Stefani was for advances
16 that were the responsibility of all the clients.
17 You know, client expenses. And then there were a
18 couple other disbursements made. So these numbers
19 don't necessarily reflect the amount that went into
20 the bank accounts of each of the participants. I
21 don't know if that make it clear, if that clarifies
22 anything, but...

23 Q (Continuing by Mr. Fink) Sure. Okay. Now, I know
24 that you produced to us today Exhibit 11, which is
25 the first Settlement Agreement October 17, 2007.

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1 relationship to the checks. There might be -- some
2 of these -- each defendant received -- each
3 plaintiff, rather, received two checks. One was
4 for the nonearnings or noncompensation portion, and
5 there was a check written for that with appropriate
6 deductions for federal withholding, state
7 withholding and city withholding. And then there
8 was a separate check issued for the noncompensation
9 aspects of the transaction.

10 And if you look at these checks, they're
11 dated December 4th, 2007. At least some of them
12 are dated December 4th, 2007, which is -- refreshes
13 my recollection why we didn't sign these documents
14 until December 5th. They wanted me to sign to
15 release and all that stuff ahead of time, and I
16 simply told them that I wouldn't do it until we had
17 the checks in hand, and then I would sign it. So
18 we didn't end up signing the Settlement Agreement,
19 we didn't have the closing so to speak until the
20 next day, December 5th.

21 Q (Continuing by Mr. Fink) Okay. Now, just to fill
22 in the blank here, I'm going to hand you what I've
23 had marked as Exhibit 17. You would not recognize
24 the cover letter. This was produced in court on
25 last Friday. But the attachment to it, you may be

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1 It's the one with the reference to the text
2 messages. Do you know what happened to other
3 copies of that document, or was there -- let me
4 withdraw that question and rephrase it.

5 Was there any understanding with regard to
6 existing copies of that Settlement Agreement, to
7 your knowledge?

8 A There was no discussion of it at all. And in fact,
9 it -- it -- all the parties here in this case tried
10 to rep -- in my opinion, tried to represent their
11 clients to the very best of their ability. There
12 were some areas that might not be up to the
13 standards if we had all the time in the world.

14 And I considered this settlement -- this
15 Exhibit 11 required Brown, Nelthrope and Harris to
16 enter into a separate Settlement Agreement, a
17 nondisclosure agreement. And they entered into
18 those agreements pursuant to Exhibit 11. And the
19 so-called -- the second Settlement Agreement,
20 Exhibit 12, requires them to do the same thing.
21 But they had already entered into it, so it's a
22 little bit bollexed up.

23 In other words, they followed some of the
24 terms of Exhibit 11, all the parties did. And then
25 when we changed it, we didn't go back and re-do

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1 those separate agreements. And we all agreed that
2 they were clear, the intent was clear as to the
3 confidentiality, and -- but if I were a law
4 professor, a contracts professor looking at this, I
5 would -- I would say hey, you should have had ---
6 re-executed those agreements, you should have
7 retaken the documents back and given them back to
8 them. But we didn't do it that way.

9 But all the parties were trying -- all the
10 attorneys were trying their best to get this matter
11 resolved, and I feel had their clients' best
12 interests at heart.

13 Q All right. I want to ask you --

14 MS. HA: (Interposing) Wait, wait a
15 minute.

16 Q (Continuing by Mr. Fink) -- some more questions
17 about Exhibit 13.

18 MS. HA: Wait.

19 MS. MCPHAIL: She has an objection.

20 MS. HA: Exhibit 12 was never
21 entered. I don't know what Exhibit 12 Mr. Stefani
22 was referring to.

23 MS. MCPHAIL: I thought he said what
24 it was.

25 MS. HA: Well, he said --

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1 of the text messages?

2 A We -- we -- we didn't destroy the text -- there's
3 nothing required us to des -- all of the text
4 messages, except to turn over all copies into this
5 escrow account.

6 Q Okay.

7 A So we didn't destroy anything. We were -- we were
8 also required to -- I wouldn't even say we were
9 required. As part of the negotiations, I
10 volunteered to remove -- they insisted upon the
11 motion that I had drafted be turned over.

12 Q Yes.

13 A And I volunteered, as part of the negotiations, to
14 remove them from our computer. Because if we
15 didn't remove them, it would -- it would defeat the
16 purpose.

17 Q Who removed them from your computer?

18 A I did. Well, I did, and I had Roquia, my legal
19 assistant, remove them from her computer.

20 Q Did the city or the mayor's representatives have
21 anything to do with scrubbing your computers?

22 A No. Not to my -- I mean, no, no. Nobody.

23 Q Okay.

24 A Unless somebody broke in in the middle of the
25 night, nobody's come over and checked them or

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1 A (Interposing) I believe that's the revised or
2 second Settlement Agreement dated --

3 MR. FINK: (Interposing) I think
4 that's 11 -- no, no, no, no.

5 A Well, it's not on mine.

6 MR. FINK: No. You're right. It's
7 12. Absolutely it's 12.

8 MS. HA: Now, what's 12?

9 MR. FINK: 12 is the so-called
10 official agreement that we were given in response
11 to the Freedom of Information Act request.

12 MS. HA: Okay.

13 Q (Continuing by Mr. Fink) Okay. Let me go now back
14 to Number 13. I have a few questions about 13,
15 which is the second Confidentiality Agreement,
16 so-called, November 1.

17 Okay. Now, there's some reference I
18 believe in here to your employees having to sign --
19 A (Interposing) That's correct.

20 Q -- confidentiality...

21 Tell me what your office was asked to do
22 with regard to the -- oh, it's on Page 3, the
23 bottom of Page 3. What did the -- I guess the
24 mayor require, or his representatives require you
25 and your employees to do with regard to destruction

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1 anything.

2 Q Okay. But part of the requirement that was made of
3 you, and part of the settlement, was that your
4 employees would sign confidentiality agreements
5 also relating to the text messaging?

6 A That's correct, because we involved -- the text
7 messages were so extensive, we involved several of
8 our employees in reviewing them. And as part of
9 our arrangement, you know, Mr. McCargo said, "Well,
10 what about your staff? Well, maybe they'll release
11 them." And I said, "No, they're very trustworthy.
12 They have been with me a long time, and I trust
13 them. We're like family." And they said, "Okay,
14 then they can just sign the agreement too."

15 Q Now, I'm interested in on paragraph -- now I'm
16 referring -- I'm still on -- on Exhibit 13, the
17 Confidentiality Agreement. And I see there's a
18 reference to Ms. Beatty's home.

19 MS. HA: What page?

20 MR. FINK: Page 2, Paragraph 4 A.

21 Q (Continuing by Mr. Fink) Can you tell me what your
22 understanding is with regard to why documents
23 obtained by the plaintiffs concerning the purchase
24 of Christine Beatty's home and financing through
25 Fifth/Third Bank, why was that an issue?

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1 A You know, I only know what McCargo told me. And
2 McCargo told me --
3 MS. HA: (Interposing) Well,
4 objection, hearsay.
5 Q (Continuing by Mr. Fink) Okay. Go ahead, tell us.
6 A First of all, it could have been a negotiation
7 tactic on his part. It could have been pure BS.
8 But he said in order for us to get you this much
9 money, you have to give us some more documents.
10 You -- we have to make it look like we're really
11 getting a bang for our buck. And I said -- and so
12 he said we want the Christine Beatty, her mortgage,
13 her husband's mortgage, anything you've got on
14 that. And I said, fine, I'm -- I said it's been
15 reported already in the newspaper, but I will be
16 happy to turn -- and that was also turned over and
17 put in escrow.
18 Q Well, what was -- what was -- what did that relate
19 to?
20 A Well, I had contended, and I believe to this date,
21 it's only my belief, that the mayor gave Christine
22 Beatty twelve thousand dollars to buy that house
23 on -- that new house she bought. Because she and
24 her -- she had moved out of the home that she was
25 living in with her husband. And my sources told me

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1 the mayor actually helped her pick this house out,
2 this new one on Westmoreland. And when she went to
3 apply for the mortgage, she had no money to put
4 down. And the bank told her that she needed
5 twenty-four thousand dollars. And the bank gave
6 her, gave her, not loaned her, but gave her
7 twenty-four -- twelve thousand dollars. And my
8 source told me that Beatty said, "Well, the mayor
9 will give me the other twelve." And the bank said,
10 "Look, this can't be a loan. It has to be a gift."
11 And she says, "Well, it will be a gift." And he
12 said, "Nobody's going to believe that the mayor
13 gave you a gift, so have the mayor give the money
14 to your mother, then have your mother make a gift."
15 So I tried to get the bank records to show
16 this. I subpoenaed the mother's account -- the
17 mother gave either a money order or certified
18 check -- I mean, a money order or a cashier's
19 check. And I tried to get the records as to where
20 the money... but in any event, I sent out a bunch
21 of subpoenas, and those were all quashed by Judge
22 Warfield Moore. Because I sent those out in the
23 Harris case -- or, wait a minute. Let me think.
24 Harris? Yeah, the Harris case.
25 So that's how I happened to have all these

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1 records. And McCargo said, we want everything.
2 Q Okay.
3 MS. HA: And I'm object -- I have
4 objected to the hearsay, and I'm going to move to
5 strike Mr. Stefani's entire statement.
6 MR. FINK: You make your objection.
7 You move to strike in a trial or in front of a
8 judge. But that's fine, Ms. Ha, okay? Your
9 objection is absolutely clear, and you can make
10 that argument to the judge, and I'm sure you will.
11 Q (Continuing by Mr. Fink) Now, Mr. Stefani, going
12 back to the -- what I'll call the formal
13 settlement, Exhibit 5, I notice that it's signed
14 by, and we referenced this earlier, Wilson
15 Copeland, II, as the -- on behalf of the City of
16 Detroit. What is your understanding of Mr.
17 Copeland's role in the settlement -- first I'll ask
18 you with regard to the settlement. What was Mr.
19 Copeland's role with regard to the settlement, as
20 you understand it? What was his involvement?
21 A When you say settlement now, you know, we've got
22 these documents called Settlement Agreements. What
23 are you referring to when you say settlement?
24 Q The resolution of the lawsuit.
25 A The --

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1 Q (Interposing) I'm talking in broader terms.
2 A Yeah. The oral agreement --
3 Q (Interposing) And I'll --
4 A (Interposing) -- that we arrived at on the 17th
5 and then reduced to writing in my office that
6 evening?
7 Q Yes.
8 A He was representing -- he is co-counsel with Ms.
9 Osamuade for the City of Detroit. McCargo is
10 co-counsel with Ms. Osamuade for Mayor Kilpatrick.
11 We all traded these notes back and forth
12 about dollar amounts, and we all came here and made
13 a few changes to this agree -- I had drafted a
14 Settlement Agreement on a yellow pad at the
15 facilitation meeting, the conference. And the
16 facilitator was from Flint, and he had to go back
17 at four o'clock, I think. And so we said, well,
18 how about going to my office, and we'll reduce this
19 to writing? And Mr. -- Mr.
20 Q McCargo, Copeland?
21 A Copeland and McCargo and Ms. Osamuade all came to
22 my office, and we tweaked the thing a little bit,
23 the yellow paper, tweaked it a little bit. And
24 then I -- then we had it typed, and then there
25 might have been a little bit more tweaking. But we

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1 didn't get out of here till about -- I think I left
2 at 8:30.
3 Q So that --
4 A (Interposing) And they left at maybe 8:15.
5 Q So the facilitator was long gone by the time you
6 really hammered out the agreement with regard to
7 the text messages and all?
8 A The fac -- first of all, the facilitator had no
9 idea about the text messages.
10 Q All right.
11 A He -- I gave him a sealed envelope with a motion in
12 it, and asked him to give it to Mr. McCargo.
13 Q So all -- just let me -- let me, just so we get
14 this in the right order. So the -- the resolution
15 of the case where the text messages came into play,
16 was outside of the purview of the facilitator? He
17 wasn't involved in that, correct?
18 MS. HA: Well, I object to that line
19 of questioning, because what -- what do you mean by
20 resolution of this case?
21 MR. FINK: What I mean, Ms. Ha, is
22 the quid pro quo, or the destruction of the
23 incriminating evidence of the mayor's perjury in
24 exchange for the mayor's decision to settle the
25 case. Does that make it clear?

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1 MS. HA: Well, first of all, Mr.
2 Fink, you don't have to be so snide to me.
3 MR. FINK: I wasn't snide. I was
4 explaining it to you, because you don't seem to
5 understand it.
6 MS. HA: Well, thank you.
7 MR. FINK: Okay.
8 MS. HA: Thank you for --
9 A (Interposing) You know, I think, in all due
10 respect, Mr. Fink, I know you are -- have quite a
11 reputation for being an outstanding constitutional
12 lawyer. But as a favor to me, I think you are
13 being a little snide to her, and I wish you
14 wouldn't.
15 MR. FINK: Well, I would apologize to
16 her, and I do so right now.
17 Q (Continuing by Mr. Fink) Now, let's get the
18 information on the record. My question related to
19 whether the resolution of the case, which is the
20 settlement on the 17th of October, the decision to
21 settle the case by the mayor's representatives,
22 took place outside of the purview so to speak of
23 the facilitator? This was negotiated between you,
24 Mr. McCargo and Mr. Copeland, correct, and Ms.
25 Osamuede?

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1 A That --
2 MS. HA: (Interposing) Objection as
3 to Mr. Fink's characterization of settlement of
4 October 17th, 2007.
5 A And, Mr. Fink, that -- that -- that can't be
6 answered simply yes or no. The facilitator -- we
7 were in two separate rooms during the facilitation
8 when this thing was negotiated. I drafted it,
9 passed it, the facilitator took it to their side.
10 They changed it. And by the time the facilitator
11 left, had to leave, we had arrived at 99.9 percent
12 of the agreement. And it had to be reduced to
13 writing, so we came to my office.
14 Now, the facilitator was never -- other
15 than numbers, he was not aware of what was in these
16 agreements. You know, I would give him -- 'cause I
17 told him, I said, "I would prefer you not know
18 what's in this envelope", when I gave it to him.
19 And he said, "Believe me, I don't want to know.
20 It's not my"... So he did facilitate the settlement
21 by coming back and saying they say they can't go --
22 they can't go a -- they can't go to eight million.
23 There's no way they can get approval for eight
24 million. And I told him, well, then we won't
25 accept eight million -- I mean, we won't settle for

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1 less than eight million. And he would take that
2 back to them. And in the meantime, we were
3 drafting this on a yellow pad of paper.
4 Now, he didn't read it, I don't believe.
5 But when the deal was over, he knew we had a
6 handshake agreement or an oral agreement to reduce
7 it to writing. But he knew, and everybody knew
8 that it had to be approved by the parties who
9 weren't there.
10 So when you say was it negotiated outside
11 the facilitation, I would say no.
12 Q (Continuing by Mr. Fink) Well, I think you
13 answered it when you said that he was not a
14 participant and had no knowledge, as far as you
15 know, of the text message component to the
16 settlement?
17 A No. He -- that's all he knew, is what I told him,
18 "I've developed" --
19 Q (Interposing) Okay.
20 A -- "information that Mr. Kilpatrick lied -- or,
21 committed perjury, and I would like you to give
22 this document." He didn't know what was in the
23 envelope. And we didn't want him to know.
24 Q Okay. Now, there was another name that's appeared.
25 And actually, it's been in the newspaper. And that

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1 involves a person named William Mitchell, III. And
2 there was a story in the Detroit Free Press
3 yesterday, that in October of 2007, he had traveled
4 to SkyTel in Mississippi, and made contact with
5 SkyTel with regard to the text messages. What do
6 you know about Mr. Mitchell's involvement in any
7 matter relating to the settlement of the lawsuit?

8 MS. HA: I'm going to object to Mr.
9 Fink's reference to the Detroit Free Press article
10 as a hearsay.

11 A You know, of course I know Mr. Mitchell. But by
12 reputation, he's got the reputation of being a fine
13 attorney. I believe he specializes in criminal
14 law.

15 Mr. McCargo took the position, not during
16 facilitation, but in other conversations, that
17 these text messages were the personal property of
18 the mayor and Ms. Beatty, and they should be
19 returned. And the city was going to tell SkyTel
20 that -- or, McCargo, somebody was going to tell
21 SkyTel that this was personal property, and they
22 had no right to have those records.

23 So I presume Mitchell was hired to do
24 that. But that's -- that -- that's a presumption.
25 But it kind of fits in with what you're saying that

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1 someone went down there and tried to get SkyTel to
2 return those records to the mayor and Beatty.
3 Q (Continuing by Mr. Fink) But you didn't -- he
4 didn't come to any proceeding that you were
5 involved in relating to the settlement?

6 A He wasn't identified until -- a moment ago I told
7 you we signed this, we had a closing on December
8 5th. We didn't even know who the mayor's
9 representative was going to be on December 5th. We
10 didn't know whether it was going to be McCargo. I
11 assumed it was going to be McCargo. McCargo said,
12 "Well, it might not be me." It wasn't until
13 several days later that I received these exhibits,
14 I think it's the one that identifies Mitchell as
15 the mayor's representative.

16 MR. FINK: Yeah. What was the date
17 of that, do you remember? What was the date? What
18 was the date of the Mitchell document? I can't
19 find it.

20 MR. STEWART: Let me see.

21 MR. FINK: Maybe you can just hand it
22 to me so I can just --

23 A (Interposing) Well, I'm looking right now.

24 Q (Continuing by Mr. Fink) Okay.

25 A It's one of the early ones that we had here.

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1 what's this? This is a notice of mayor --
2 approval -- no, that's not it.

3 MR. STEWART: Here we go.

4 A It's a notice of designation of representative,
5 right there.

6 MR. STEWART: Exhibit 8.

7 Q (Continuing by Mr. Fink) Okay. So the first you
8 knew of Mr. Mitchell's involvement at all in the
9 settlement situation, for lack of a better word,
10 was this document, Exhibit 8, dated November 1?

11 A Yeah. And it seems to me -- well, no, not
12 necessary -- I mean, I hate to split hairs here,
13 but we had the closing on the 5th of December,
14 because we had all the checks. And, you know,
15 originally we thought that we would deliver
16 everything out of the safety deposit box that day.
17 But by the time we finished the closing, it was
18 seven or seven thirty in the evening, and then I
19 believe the next day either Mitchell couldn't make
20 it -- and I was told over the phone, the mayor's
21 going to designate Mitchell. And that came after
22 the 5th. But Mitchell couldn't be there I believe
23 on the 6th or something, so --

24 Q (Interposing) By be there, you're referring to the
25 bank or to --

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1 A (Interposing) At the bank, right.

2 Q Okay.

3 A So I can tell you I have a letter authorizing my
4 son to represent me. And he went down, Brady
5 Stefani, who's a lawyer, went down, represented --
6 took my key down, met Mitchell, gave him all the
7 records out of the box.

8 So I don't mean to split hairs, but I
9 think I knew about Mitchell perhaps a day before I
10 got this Exhibit 8.

11 Q Which was not until December --

12 A (Interposing) Yes, correct.

13 Q -- of 2007?

14 A Right.

15 Q And you may have just said it, but if you don't
16 mind, I didn't pick it up. What date were the
17 documents retrieved from the safe deposit box?

18 A I didn't say. I said I got a letter to my --

19 Q (Interposing) That's why I don't remember it.

20 A We ran into some glitches. Like one guy couldn't
21 make it on -- so I know I wrote an authorization
22 for my son to represent me. Whatever date that is,
23 that's when the documents were retrieved.

24 Q Okay. And to your -- the best of your knowledge,
25 it was Mr. Mitchell who came to get them on behalf

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1 of the mayor?
 2 A Absolutely. I don't even know if Mr. McCargo was
 3 there, but he probably was. He probably introduced
 4 my son Brady to Mr. Mitchell. But I know Brady
 5 came back telling me that he turned them over to
 6 Mitchell.
 7 MR. FINK: I'm going to confer with
 8 my co-counsel.
 9 A Esteemed co-counsel?
 10 MR. FINK: My esteemed co-counsel,
 11 Mr. Stewart.
 12 (WHEREUPON A BRIEF PAUSE WAS HAD IN
 13 THE PROCEEDINGS.)
 14 MR. FINK: Okay. One more brief line
 15 of questioning, Mr. Stefani, if I can. And I'm
 16 interested in this, and I'm sure there's a good
 17 reason.
 18 Q (Continuing by Mr. Fink) When I issued a subpoena
 19 to SkyTel earlier this month, I copied from a
 20 subpoena in the court file in the Brown, et al,
 21 versus Kwame Kilpatrick, et al lawsuit in front of
 22 Judge Callahan. There is in that file a subpoena
 23 to SkyTel. And I copied the language to parallel
 24 exactly what you had asked for or your office had
 25 asked for. And that was, I'm going to read it out

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1 of mine, and I believe it's identical.
 2 "Identify the City of Detroit Michigan
 3 pager number for Christine Beatty of the City of
 4 Detroit, and produce text messages received by and
 5 sent from that pager number for the period of
 6 September 1, 2005, through October 31, 2005" --
 7 excuse me if I said '5. I meant 2002. "September
 8 1, 2002, through October 31, 2002, and for the
 9 period April 1, 2003, through May 31, 2003."
 10 It was very specific. And I am interested
 11 in knowing why you asked for that -- those specific
 12 messages, and why you asked for them? Yeah, I
 13 guess that's the question.
 14 MS. HA: I'm going to object.
 15 Q (Continuing by Mr. Fink) How did you know that
 16 there was something there between those dates?
 17 MS. HA: Object to irrelevancy.
 18 A The -- I limited it to those dates, because it's my
 19 belief in discovery, and this has been my practice
 20 at least for recent years, to limit your discovery
 21 requests so that you can avoid the other side
 22 contending that it's burdensome and expensive and
 23 all that stuff. If you really want something, be
 24 as narrow as you can.
 25 And the reason I chose those two months,

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1 is because Walt Harris had testified he saw -- he
 2 accompanied the mayor out of town in September, I
 3 believe. And the mayor tried -- the mayor didn't
 4 allow Walt to make his usual security check of the
 5 hotel room. And when the mayor opened the door, he
 6 saw Christine Beatty sitting on the bed, totally --
 7 as I understand it, totally clothed. And I wanted
 8 to see if there were text messages about that.
 9 Also the Manoogian Mansion party was
 10 supposed to have taken place in September. And I
 11 wanted to see if there were text messages about
 12 that.
 13 The April and May time frame was done
 14 because that's when Nelthrope reported to Internal
 15 Affairs the misconduct by the security people Jones
 16 and Martin. And Beatty you know, of course, and
 17 the mayor of course, have always said his
 18 termination had nothing to do with that; that his
 19 termination came from the result of an anonymous
 20 letter. And I wanted the text messages around that
 21 time to see if there weren't discussions of Brown's
 22 termination prior to the date this so-called
 23 anonymous letter showed up. And sure enough, the
 24 text messages confirmed that the mayor and Beatty
 25 had made up their mind not only to fire Brown, but

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1 to fire his -- his inspectors and commander before
 2 the so-called anonymous letter was slid under
 3 Beatty's door.
 4 So I picked those two dates -- those two
 5 two-month time periods, because I thought if there
 6 was going to be anything, it would be in that
 7 period. And then if I needed more, I could always
 8 send another subpoena.
 9 Q (Continuing by Mr. Fink) And I guess it's
 10 self-evident, but I'm assuming the officers used to
 11 see the mayor and Ms. Beatty text messaging, and
 12 that's why you knew there were text messages, am I
 13 correct?
 14 MS. HA: Objection as to foundation.
 15 A Yes. The office -- well, they don't know who they
 16 were text messaging.
 17 Q (Continuing by Mr. Fink) But they saw them using
 18 text pagers?
 19 MS. HA: Objection, foundation.
 20 A Right. And they heard cell phone calls also, which
 21 were testified to.
 22 MR. FINK: Okay. Mr. Stewart, if you
 23 have any questions, I am...
 24 MR. STEWART: Oh, all right.
 25 MR. FINK: I'm done.

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1 MR. STEWART: Thank you. I have just
2 a few.
3 You've been patient, Mr. Stefani. I'll
4 try to be as quick as I can.
5 EXAMINATION
6 BY MR. STEWART
7 Q When did you first get these text messages that
8 were the subject of these various agreements we've
9 seen here?
10 A I believe it was like October 5th or so. If you --
11 I believe in the documents I gave you, if my
12 parallel legal followed my instructions, there's a
13 cover letter from SkyTel --
14 MR. FINK: (Interposing) No.
15 A -- encompassing the text messages and a printout of
16 Beatty's -- some kind of computer printout, one
17 page of like her account or something.
18 MR. FINK: We did not get that for
19 the record.
20 A well, then she must have left them out of the
21 package, but I can get them for you. They were
22 intended to be in the package.
23 And I believe that letter is dated like
24 the 4th or 5th of October. And that's the first
25 time I got the text messages.

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1 Q (Continuing by Mr. Stewart) All right. Help me --
2 A (Interposing) Of 2007.
3 Q Right.
4 A 4th and 5th, after the trial.
5 Q Yeah. And the trial ended roughly when, basically?
6 A I think it was around the 12th. I'm guessing now,
7 but around the 10th or 12th of September.
8 Q September.
9 MS. COLBERT-OSAMUEDE: September
10 11th.
11 MR. FINK: Yeah, September.
12 MS. COLBERT-OSAMUEDE: I remember
13 9-11.
14 MR. FINK: Yeah, it was.
15 Q (Continuing by Mr. Fink) Do you want to look for
16 that before you and I go on to discuss all of this?
17 A No, no.
18 Q You look like you're looking for something, that's
19 why I stopped.
20 A I am, but I can -- believe it or not, I can --
21 Q (Interposing) You're multitasking?
22 A Despite what my wife says, I can do two things at
23 once.
24 Q Okay.
25 A Despite the fact that I'm not a woman.

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1 Okay. Go ahead.
2 Q So the trial ends roughly on September 11th. You
3 did not have these text messages during the trial
4 then, as I understand it?
5 A No. That's correct.
6 Q Do you know why you didn't have them during the
7 trial?
8 A Yes.
9 Q Why is that?
10 A Because when I originally requested the text
11 messages, I believe it was September or October,
12 2004. The city -- the city brought an emergency
13 motion to quash the subpoena. There was a hearing
14 on it. The judge ruled in my favor, and I sent out
15 a second subpoena to SkyTel. And the city filed a
16 second emergency motion to quash. And at that
17 second motion, they argued that there was a
18 government deliberative process privilege that made
19 these text messages confidential. And Judge
20 Callahan sort of laughed, and he said, "Well, you'd
21 better have a better privilege than that." He
22 says, "But I'll tell you what, have the messages
23 sent to me, and I'll be the judge of whether
24 they're privileged."
25 So my second subpoena went out directing

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1 SkyTel to send the messages directly to Judge
2 Callahan. From that day forward, I assume Judge
3 Callahan got them. You know, they filed their
4 motion for summary disposition. We filed motions
5 for summary disposition almost immediately after
6 that, and all our attention was focused on those.
7 And then they appealed, and for the next three
8 years we handled appeals.
9 We got to the trial. I put Beatty on the
10 stand. I asked her some very specific questions
11 about text messages: Did she ever send a romantic
12 message to the mayor? Did she ever send a
13 sexually-explicit message to the mayor? Did she
14 ever discuss Gary Brown in a text message? Did she
15 ever discuss the release of Nelthorpe's name? Her
16 answers were no to everything. So then I went to
17 the judge and I said, "Would you look at the
18 records? And if there's anything in those text
19 messages that's contradictory, I want to introduce
20 it." He said, "I don't have the text messages."
21 And I said, "Sure you do." And he said, "No,
22 you've got them." I said, "No, I don't. You've
23 got them." And it turned out nobody had them.
24 So after the trial was over, I went back
25 to Sky -- well, the judge told me, "Well,

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1 re-subpoena the messages. Re-subpoena the
2 messages." And I think that was like three days
3 before the end of the trial. And I did re-subpoena
4 them. But I got -- I was told by SkyTel they were
5 no longer available because of some sort of a
6 corporate reorganization, and those records weren't
7 available.

8 So I didn't take that for an answer, and I
9 contacted a person who had -- that I had sent the
10 subpoena to three years earlier. And he said those
11 messages are still there, these new people just
12 don't know where to find them. And he told me. So
13 I sent out a new. And I said, "Hey, by the way,
14 why didn't you send them to the judge?" And he
15 said someone from -- the one from 2004, I said,
16 "Why didn't you follow that order and send them to
17 the judge?" Now, this guy no longer worked for
18 SkyTel. He was working for the state department or
19 something. And he said, "Because we got a call
20 from the City of Detroit telling us that they had
21 filed a motion to quash the subpoena, another
22 motion to quash the subpoena, and not to release
23 those messages until the judge ruled."

24 Well, then I examined my records, and I
25 found that the city did file a third motion to

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1 quash like two days after the judge -- or, three
2 days after the judge ruled the records be sent to
3 him. In other words, I filed my first motion, they
4 lost. The second motion, the judge said send the
5 records to me. Then unbeknownst to me, they filed
6 a third motion to quash, and they called SkyTel and
7 said, we've -- we're contesting this subpoena,
8 don't send those records until the judge rules.

9 Then they never brought -- they never
10 motioned it for hearing. So for three years, I was
11 unaware that there had been a third motion to
12 quash, and --

13 Q (Interposing) Let me interrupt you for one second.

14 A Yeah, I wish you would, because I kind of forgot
15 what your question was.

16 Q Was the third -- was the third motion to quash
17 served on you?

18 A You know, I don't remember having been served on
19 it. We've got twenty-five boxes. But -- but, I
20 did find a copy of the motion in amongst those
21 twenty-five boxes, so it probably was served on me.

22 Q Okay. But it was never noticed for hearing?

23 A No.

24 Q Are you able to tell us the name of the person at
25 SkyTel who provided this information to you, the

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1 man you said is now at the state department?

2 A You know, I don't remember. But we've got it
3 written down, and, you know, I could do that. But
4 I don't remember it right now.

5 Q Okay. You don't recall it off the top of your head
6 here?

7 A No.

8 Q All right. Did you -- did he tell you who it was
9 from the city --

10 A (Interposing) No.

11 Q -- who called?

12 Did he tell you if it was an attorney or
13 not an attorney?

14 A I don't -- I think he just said someone from the
15 city.

16 Q Had they called him?

17 A You know -- you know, and I don't know that. I
18 didn't ask him that. I think he just said someone
19 from the city called and told us not to reduce --
20 release the records until the judge ruled on their
21 new motion to quash.

22 Q Which was never noticed for hearing?

23 A Correct.

24 Q All right. Let's come to the end of the trial
25 again now. Let's come back to that time frame, if

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1 we may.

2 You indicated you sent another subpoena
3 per the Judge Callahan's direction two to three
4 days before the trial ended?

5 A Yes.

6 Q Okay.

7 A That's the one we were told...

8 Q You were called -- you called, and they said gee,
9 we're sorry, those records don't exist?

10 A That's correct.

11 Q You then called the person who had dealt with the
12 subpoena at SkyTel back in 2004; he said that's
13 wrong, they do exist?

14 A (Shaking head affirmatively).

15 Q How did you end up getting them after that? What
16 happened?

17 A He told me the person to address the subpoena to --
18 or, he gave the instructions on what to say in the
19 subpoena. And I think we had to address it to a
20 particular person. And we sent it out and got the
21 records. We got them on -- we got a -- they came
22 by -- with this cover letter that I'm referring to,
23 and this printout of her -- probably the first page
24 in her account or something like that. Didn't have
25 any text messages. It just showed all the

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1 particulars of her account, along with a CD. And
2 that CD had all these text messages on it.
3 Q Could you even estimate how many text messages
4 there were?
5 A I know that I printed them out right away so we
6 could read them, and only made one copy. And they,
7 single spaced, a little bit smaller type than
8 ordinary type, there were like two hundred twenty
9 pages or two hundred and ten pages. I don't have
10 any idea how many.
11 Q And that two hundred and ten pages covered both the
12 period --
13 A (Interposing) Yes.
14 Q -- in '02 and '03?
15 A Yes. There was about a hundred and five or a
16 hundred and ten in each -- covering two months in
17 '02 and two months -- each one amounted to about a
18 hundred and ten pages.
19 Q Okay. So you got those some time before October
20 17th?
21 A Yeah. The date -- I think it was the 5th, 6th.
22 Q Okay. Whatever date's on that letter, is when you
23 got them?
24 A Yes.
25 Q All right. Let me see if I have understood

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1 everything you've said earlier today about some of
2 the chronology. The trial ends on September 11th.
3 I assume, as with all civil trials where there was
4 a judgment, there were discussions about settlement
5 pre appeal, is that right?
6 A No.
7 Q You told me you -- or, you told Mr. Fink earlier
8 today that you had talked to Ms...
9 A Osamuede.
10 Q Osamuede regarding whether there could be a global
11 settlement?
12 A That was in another case. That was in the Bowman
13 case.
14 Q I understand.
15 A And we did have a global settlement during
16 facilitation on attorney's fees.
17 Q But did you tell us that she had said there would
18 be no -- there was not going to be a global
19 settlement on this case, this case we're here
20 about?
21 A It didn't come from her lips. It came from the
22 facilitator. He came back in and said they said
23 there won't be any global settlement, because they
24 don't even know whether they've got grounds to
25 appeal, or they don't know what their grounds to

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1 appeal are.
2 Q Okay.
3 A Yet.
4 Q So you go -- so the facilitation is scheduled for
5 October 17th I guess, right?
6 A Yeah.
7 Q Is that a facilitation on the whole case, or simply
8 on your attorney's fees under the whistle-blower
9 statute?
10 A Just attorney fees under the whistle-blower, the
11 same as the prior that I -- that's why I gave the
12 example of the Bowman facilitation. They were both
13 facilitations to deal only with attorney's fees.
14 Q So you -- prior to the 17th, had there been any
15 discussions about settling the liability?
16 A None.
17 Q Okay. Has anybody said we don't want to settle the
18 liability?
19 A There were no discussions one way or the other.
20 Q All right. Why was the facilitation limited only
21 to the attorney's fees under whistle-blower?
22 A Because that's Judge Callahan's practice. He
23 doesn't like -- he likes -- under whistle-blower
24 suits or any suit where by statute he can award
25 attorney's fees, he sends it to a facilitator. I

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1 think it saves him time.
2 Q All right. So as far as you know at the
3 facilitation, forgive me if I didn't pick this up,
4 Mr. McCargo is there, although in another room
5 perhaps, Ms. Osamuede is there. What other
6 attorneys were there on the other side?
7 A There's Wilson Copeland.
8 Q Okay.
9 A And I believe there were two young attorneys. I
10 believe one worked for McCargo and one worked
11 for -- and they were the attorneys who were in the
12 courtroom during the trial.
13 Q All right. You spend all day going back and forth
14 on your attorney fees under the whistle-blower,
15 correct?
16 A I said we spent about two and a half, three hours.
17 Q All right. You feel you've come to loggers heads
18 on that?
19 A They -- I think they said they might be inclined to
20 pay -- I think they may -- maybe the facilitator
21 came back. Four hundred fifty thousand came up. I
22 believe they said we'll pay four hundred fifty
23 thousand for attorney's fees. I sent back the
24 message, I will accept five hundred thousand if we
25 can have a global resolution of appellate rights

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1 and get it over with. The facilitator came back
2 and said, they say that they can't do that, they
3 don't want to do it because they haven't examined
4 the record yet.
5 But, you know, that -- it was the same
6 thing as Bowman. I mean, they could have been --
7 they could have been BS'ing me. That could have
8 been a tactic. I didn't know.
9 Q Okay. But this --
10 A (Interposing) But that's when I said, you know,
11 okay. Then I -- you know --
12 Q (Interposing) After you -- let me see if I can
13 help you.
14 A I'm sorry.
15 Q No. I just want to make sure that I get this
16 right. After you understand that the city will not
17 enter into a global agreement on this case, you
18 ended your loggers heads on your attorney's fees,
19 you give the sealed envelope with your motion for
20 attorney's fees which references details of the
21 Kilpatrick/Beatty text messages, is that right?
22 A That's correct.
23 Q And you give the direction that only Mr. McCargo's
24 to look at that, is that right?
25 A That's correct. And I -- could I add one other

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1 thing?
2 Q Sure.
3 A Because it's important to me, but maybe not to you.
4 The facilitator said, "What's in this
5 envelope?" And I said, "I've got irrefutable", is
6 the word I used, "Irrefutable proof that the mayor
7 and Beatty perjured themselves." And he said,
8 "Well, what do you want me to tell them?" And I
9 said, "I don't want you to tell them anything,
10 except I want you to give them the envelope."
11 Q Okay.
12 A And he said to me, you know, "You have to careful.
13 You don't want to tie -- you don't want to like
14 threaten to release the information if they don't
15 settle." And I said, "I'm not doing that. I only
16 want you to tell them that this is a motion." And
17 he gave it to them, and he coached me on not saying
18 anything else or something.
19 Q All right. In your motion that you had drafted for
20 attorney's fees that you gave to Mr. McCargo in
21 this envelope, am I correct that your argument was
22 you were entitled to enhanced fees because you had
23 proof that Beatty and Kilpatrick had perjured
24 themselves during the trial?
25 A It wasn't that I had proof. You know, there are

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1 certain criteria that the statute -- or, not
2 statute, but the case law says you have to take
3 these things into consideration. One of them is
4 the difficulty that -- the time consumed.
5 The basis of my motion was that if Beatty
6 and the mayor had not lied since day one through
7 all of these depositions, we would have not had to
8 incur anywhere near a million dollars' worth of
9 attorney time; and, therefore, the judge should
10 take that into consideration and award us the
11 million dollars instead of just, you know, saying
12 okay, I'll give you twenty-five thousand or
13 something.
14 Q And you supported your motion with the --
15 A (Interposing) A brief.
16 Q With a brief and quotations, which I think you
17 called rather extensively --
18 A (Interposing) Very extensive.
19 Q -- from the Beatty/Kilpatrick text messages --
20 A (Interposing) Corrects.
21 Q -- which you argued demonstrated they had lied from
22 the beginning of the case, is that right?
23 A That's correct.
24 Q All right. As I understand it, it was then
25 approximately a forty-five minute break?

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1 A That McCargo was reading it.
2 Q McCargo. Then McCargo asked to see you alone?
3 A Yes.
4 Q And you go outside?
5 A That's correct.
6 Q Where was this?
7 A This was at the -- Charfoos and Charfoos has a mock
8 courtroom, mock trial courtroom.
9 Q Um-hum (affirmatively).
10 A And that's where the facilitation was, in that mock
11 trial courtroom. And right outside the door is a
12 big parking lot for Charfoos and Charfoos' cars.
13 And when I -- I do know that McCargo -- he gave the
14 thing to McCargo outside. McCargo stayed outside
15 reading it, didn't -- didn't show it to the other
16 attorneys.
17 Q Okay. You --
18 A (Interposing) And then when I walked out, there
19 was McCargo standing. And I -- and I said to
20 you -- or, testified that he looked ashen.
21 Q And McCargo told you, "I had no idea of this"?
22 A That's exactly what he meant -- I mean, that's what
23 he said. I don't know whether he was saying I had
24 no idea you got these text messages, or he meant I
25 had no idea my clients were lying about their

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1 relationship. I didn't discuss that with him. He
2 just said, "I had no idea." And then he -- he
3 sheepishly, a few seconds later said, "Have you
4 filed this?" And that's when I said, "No."
5 Q All right. He then calls -- he told you that he
6 called the mayor and got him on his phone at the
7 airport, is that right?
8 A He said --
9 Q (Interposing) From where doesn't matter.
10 A He said to me -- I want to be as correct as I can.
11 He said, "Can you stay here a while while I try to
12 get ahold of the mayor" -- or -- or, "will you stay
13 here a while while I make a phone call?" And I
14 said, "Sure." And, you know, another fifteen
15 minutes went by. And the facilitator came back
16 into the room and said, "He got ahold of the mayor
17 at the airport, and the mayor has approved
18 negotiating for a global resolution. And the city
19 attorney" -- this gentleman...
20 Q The corporation counsel John Johnson?
21 A Yes. "Is coming down. And we can have -- we can
22 resume negotiations when he gets here."
23 Q Okay. So after McCargo --
24 MS. HA: (Interposing) Mr. Stewart,
25 I'm just going to place the same objections that I

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1 dollar attorney fee and forget everything else, we
2 were done talking.
3 Q But what you know is, prior to your discussion with
4 McCargo in the parking lot, refusal to negotiate a
5 global settlement by the defendants, correct?
6 A Yes.
7 Q After your discussion with McCargo in the parking
8 lot, and he contacts the mayor, willingness to
9 negotiate now a global settlement, is that correct?
10 A Yes.
11 Q All right. And the corporation counsel of the City
12 of Detroit then in fact does come to participate,
13 is that correct?
14 A Yes.
15 Q All right.
16 A Now, I -- now, I don't mean to make this difficult,
17 but I don't know whether McCargo got permission
18 from the corporation counsel too. You made it
19 sound like the mayor said go ahead and negotiate a
20 global settlement and this Mr. Johnson was coming
21 down to assist in that. It may have been Mr.
22 Johnson who said okay, it's all right to do a
23 global. I don't know that. All I know is the
24 facilitator came to me and said, good news. He got
25 the mayor at the airport, and they're willing to

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1 had stated on the record for Mr. Fink's same
2 questions that are being asked, but differently, to
3 Mr. Stefani.
4 MR. STEWART: So noted.
5 Q (Continuing by Mr. Stewart) So after McCargo calls
6 the mayor, you're informed there's going to be a
7 global settlement, and the corporation counsel of
8 the City of Detroit is coming down to these
9 negotiations?
10 A I'm informed -- I was informed they would be
11 willing to negotiate a complete resolution or
12 global settlement. Because that's what I had been
13 asking for. They didn't say we're going to settle.
14 They said we will discuss a complete --
15 Q (Interposing) And they had rejected that prior in
16 the dep -- in the facilitation? They had rejected
17 a global settlement approach or negotiation?
18 A Yes, they did.
19 Q All right.
20 A And as I said, whether it was a tactic or not -- I
21 didn't get the impression it was a tactic. I got
22 the impression it was over with.
23 Q Okay.
24 A We weren't -- you know, if I didn't take the
25 forty-five -- or, four hundred fifty thousand

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1 negotiate a global resolution, and Johnson's coming
2 down, or the -- whatever it is, the corporation
3 counsel is coming down.
4 Q The parties then -- what was the amount, if you
5 recall then, approximately, of your verdict with
6 interest?
7 A Oh, it was -- it was 7.9 million. There was no
8 question about that.
9 MR. FINK: Is that 7.9? I'm sorry,
10 what did you say?
11 A 7.9.
12 MR. FINK: Okay.
13 Q (Continuing by Mr. Stewart) 7.9?
14 A And we didn't even negotiate that.
15 Q That included the interest and --
16 A (Interposing) No attorney's fees, but interest.
17 Q That was the total dollar value of your
18 settlement -- I'm sorry, of your verdict at that
19 time?
20 A That's correct.
21 Q 7.9 million?
22 A Yeah.
23 Q Did that include four hundred thousand dollars for
24 the one of your clients? I forget which one.
25 A No.

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1 Q So the total value was, if I'm correct, and you
2 correct me if I'm wrong, 7.9 million, plus four
3 hundred thousand for your other client?
4 A Well, total value of what? You mean --
5 Q (Interposing) Of what that verdict was worth at
6 that time.
7 A Well, I didn't have a verdict for four hundred
8 thousand for the third client. That hadn't gone to
9 trial yet.
10 Q I see. All right.
11 A So I -- that's all I had in my hand, was 7.9
12 million. And nobody argued that.
13 Q All right.
14 A Nobody said I'll give you 7.6.
15 Q All right. That's what you had --
16 A (Interposing) Yes.
17 Q -- the 7.9 in hand at the time?
18 A Subject to an appeal.
19 Q I understand. So coming back to the day of October
20 17th then, after Mr. Johnson has arrived, you and
21 the other side negotiate what becomes -- I sort of
22 forget the exhibit here, the agreement of October
23 17th, which is Exhibit 11, is that correct?
24 A Yes. Exhibit 11 is the typed version of the oral
25 agreement we arrived at during the facilitation.

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1 Oral agreement, and then my yellow sketchy out --
2 sketched-out portion.
3 Q All right.
4 A Yellow pad.
5 Q This is the agreement you worked out after Mr.
6 Johnson arrived at the facilitation?
7 A That -- that's correct, yeah.
8 Q Okay.
9 A I don't know if he stayed there the whole time
10 though.
11 Q But this agreement wasn't done --
12 A (Interposing) Absolutely not.
13 Q -- prior to --
14 A (Interposing) No.
15 Q -- you giving Mr. McCargo the envelope? You were
16 at loggers heads then, weren't you?
17 A Yes.
18 Q Okay. So this is the agreement that got worked out
19 after McCargo had the envelope?
20 A Yes.
21 MS. HA: Asked and answered.
22 Q (Continuing by Mr. Stewart) Okay, good. Now, you
23 indicated Christine Beatty signed one of these
24 agreements. We'll say the second agreement I'll
25 call it, right?

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1 A No. She signed the release.
2 Q The release. Was she represented by anyone, to
3 your knowledge, in all of this?
4 A Oh, no, no. She wasn't at the facilitation. She
5 was at none of the meetings. Whether she consulted
6 with an attorney, I have no idea.
7 Q All right.
8 A Although I did note that Morgan -- More -- what's
9 his name, Morganroth?
10 MR. FINK: Mike Morganroth.
11 MR. STEWART: Morganroth?
12 MR. FINK: Yeah.
13 A He volunteered to the newspaper, which kind of
14 pissed me off, he said, "Well, this thing really
15 won't go up on appeal. They'll probably accept
16 three million dollars." Now I find out he's
17 representing Beatty. In other words, he tells the
18 world what he thinks I'll settle for, and then now
19 he's representing Beatty.
20 Q (Continuing by Mr. Stewart) Okay.
21 A But if he's a friend of yours -- I know he's a
22 great lawyer, but it rubbed me the wrong way.
23 MR. FINK: No friend of mine.
24 MR. STEWART: That's all off the
25 record.

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1 A 'Cause there was no way in hell we were going to
2 settle for that.
3 Q (Continuing by Mr. Stewart) All right.
4 A Actually, the city ended up getting -- I am as
5 confident as I sit here, and I've been practicing
6 law for thirty-five years, if not thirty-six, we
7 would have ended up with a 12 million dollar -- at
8 the rate -- we're getting a thousand dollars,
9 pretty close to a thousand dollars a day interest.
10 And we would have got attorney's fees of a million
11 dollars. Because once the text messages became
12 part of the record, they would have gone into the
13 appeal, and we would have ended up with 12 million
14 dollars. So I personally think -- sometimes I
15 think I settled for too little in terms of
16 attorney's fees, 'cause we only took a hundred
17 thousand dollars. And that was really expenses.
18 We had a hundred thousand dollars in expenses.
19 But in any event, I thought they
20 negotiated a good deal, and -- and we were all in
21 agreement with it.
22 MR. STEWART: Okay. Thank you. I
23 don't have anymore questions. Thanks very much.
24 MS. HA: Okay. Can we take a
25 five-minute break?

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1 A Sure.

2 (WHEREUPON A BRIEF PAUSE WAS HAD IN
3 THE PROCEEDINGS.)

4 MS. HA: Thank you.

5 (WHEREUPON THE COURT REPORTER MARKED
6 DEPOSITION EXHIBIT NUMBER 18.)

7 MS. HA: Just so that the record is
8 clear, I'm going to ask the court reporter to also
9 submit and retain a second copy of less than what
10 is the exhibit. It's the documents that were
11 produced and received by the attorneys of City of
12 Detroit, which has been initialed by Ms. McPhail
13 and numbered. We're going to ask that -- we're not
14 going to give those records to Mr. Stefani, but
15 we're going to give those records to the court
16 reporter to be delivered to the judge. I know that
17 it may be repetitive, but we want to make clear
18 that what was produced is initialed and signed off
19 by the City of Detroit. And I don't see any
20 objection.

21 MR. FINK: What -- well, I'm not sure
22 I understand. It has the court reporter's sticker
23 on it, and those are the only official documents
24 that are going to the judge.

25 MS. HA: Right.

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1 MS. McPHAIL: (Interposing) Do you
2 understand?

3 MR. FINK: -- missing. No, I don't.
4 I don't understand what I'm missing here, because
5 we can agree that -- what the documents are that
6 Mr. Stefani produced today. They're also --

7 MS. McPHAIL: (Interposing) Um-hum
8 (affirmatively), yeah, but we hadn't yet, so...

9 MR. FINK: What's that?

10 MS. McPHAIL: We hadn't yet, so
11 that's why I was making sure.

12 MR. FINK: Well, why don't you -- I
13 mean, we'll look at the official exhibits, and
14 we'll all agree those --

15 A (Interposing) Well, she's saying that you may not
16 have introduced all the documents that I gave you.

17 MR. FINK: Oh, I did. I labeled
18 every single documents that you gave me.

19 MS. HA: Except we were missing some
20 exhibit numbers. Remember we skipped a couple
21 of --

22 MR. FINK: (Interposing) No. The
23 only ones you were missing were my documents, and
24 that's 6 and 7. 6 is the Free Press story. I
25 didn't introduce it, because we were beyond that.

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1 MS. McPHAIL: Can I say -- can I tell
2 you why?

3 MR. FINK: Yeah, okay, please.

4 MS. McPHAIL: Okay. None of the
5 records that Mr. Stefani handed us when we walked
6 into the room are Bates stamped. There are
7 thirty-three pages that was in that, right? Okay.

8 MR. FINK: I don't know. I
9 haven't --

10 MS. McPHAIL: (Interposing) Just
11 work with me.

12 MR. FINK: All right.

13 MS. McPHAIL: There's thirty-three
14 pages --

15 MR. FINK: (Interposing) I'll assume
16 you're right.

17 MS. McPHAIL: -- right, in the file.
18 If next week someone wanted to say that there was a
19 document in that file other than those thirty-three
20 pages, there's no evidence of what he handed us;
21 except that they are numbered now, and initialed.
22 So when we walk out of here, we have a record of
23 what was given to us today. That's the only
24 reason.

25 MR. FINK: I don't know what I'm --

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1 And 7 was the Judge's order for deposition, which I
2 didn't bother introducing either, because we'd
3 already gone past it.

4 MS. McPHAIL: No. But it isn't
5 really about you or anything you've produced.
6 Honestly, it's about what Mr. Stefani handed us
7 when we walked into the room; some of which you
8 used, and some of which you didn't.

9 MR. FINK: I used every one that he
10 gave me, every one.

11 MS. McPHAIL: Okay.

12 MR. FINK: And they're numbered 8
13 through 16.

14 MS. McPHAIL: Right. Whatever you
15 used, there's thirty-three pages between documents
16 8 through 16.

17 MR. FINK: I don't know. I'll count
18 them.

19 MS. McPHAIL: Okay. That's why I
20 did, this so we would know.

21 MR. FINK: How many do you think
22 there are?

23 MS. HA: Wait. There's thirty-five
24 including the one that he just produced.

25 MS. McPHAIL: No. Just what was in

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1 the file folder when you walked in.
 2 MS. HA: Oh, I see.
 3 MS. MCPHAIL: The one you just
 4 produced is not in here.
 5 MS. HA: Okay.
 6 MS. MCPHAIL: You can ask questions
 7 about that. It will be part of the record.
 8 MS. HA: Okay.
 9 MS. MCPHAIL: But the file folder he
 10 handed us, had thirty-three pages in it, that's all.
 11 MR. FINK: All right, yeah, okay.
 12 Mr. Zuckerman suggested, and I think it's a good
 13 suggestion, why don't we match them up after? Ask
 14 the questions. Let's finish that up, and we'll
 15 match up the exhibits, and we'll stipulate that
 16 these are the exhibits. You don't have to take a
 17 lot of time --
 18 MS. MCPHAIL: (Interposing) I'm not
 19 asking her to label them or anything, just keep
 20 them.
 21 A And then if somebody got an exhibit that somebody
 22 else didn't get, I can assure you that it was --
 23 it's an oversight.
 24 MS. MCPHAIL: Right.
 25 A Because I just said make three copies of

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1 everything. My copy, which --
 2 MS. MCPHAIL: (Interposing) Yeah.
 3 And I wouldn't think you would have done it on
 4 purpose. It's just, you know, oversights happen.
 5 A You know, to further complicate this so that none
 6 of us get home in time, I will tell you that I did
 7 not produce a whole bunch of e-mails that were
 8 exchanged between Ms. Osamuede and me and McCargo.
 9 You know, I have a stack with some duplication of,
 10 you know, a half inch, three-quarters of an inch
 11 thick. I went through them all last night, and I
 12 didn't -- you know, you're welcome to those if you
 13 want, but I didn't produce them.
 14 MR. FINK: I have thirty-three.
 15 MS. MCPHAIL: Right. That's right.
 16 MR. FINK: I thought you said
 17 thirty-two.
 18 MS. MCPHAIL: No. Thirty-three
 19 pages.
 20 MR. FINK: I have thirty-three pages.
 21 And you can count them yourself, if you like.
 22 MS. MCPHAIL: No. I believe you. I
 23 just want to make sure.
 24 A So we're all in agreement I won't produce those
 25 e-mails?

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1 MR. FINK: No.
 2 A I mean, they're here, but they're not worth it.
 3 MR. FINK: No.
 4 MS. MCPHAIL: No.
 5 A In my opinion.
 6 MS. MCPHAIL: Okay. Go on.
 7 EXAMINATION
 8 BY MS. HA
 9 Q Okay. Mr. Stefani, did you notify the defendants'
 10 attorneys of all of the subpoenas that were issued
 11 in Brown/Nelthroe versus City of Detroit and Mayor
 12 Kwame Kilpatrick, and Harris versus City of Detroit
 13 and Mayor Kwame Kilpatrick case -- cases?
 14 A Yes. To the best of my knowledge we not only
 15 notified them, but we served them with a copy.
 16 Now, I didn't serve the copy on this one. The one
 17 that actually resulted in the records, I didn't
 18 give them till that night in my office. But I
 19 served each of them with a copy, and we've done a
 20 Proof of Service on it.
 21 Q Okay.
 22 MR. FINK: Let me just make an
 23 objection on the record, and you proceed, and Mr.
 24 Stefani will answer as he wishes.
 25 But this is outside the scope of the

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1 judge's order which related to the Confidentiality
 2 Agreement and documents requested by the Free
 3 Press. It's also outside -- it's irrelevant. It
 4 has no relevance whatsoever to the Free Press'
 5 lawsuit, which is the issue here, which is over the
 6 confidential settlement documents.
 7 MS. HA: You know, what, Mr. --
 8 MR. FINK: (Interposing) So now
 9 you're getting into things that happened with the
 10 Brown and Nelthroe trial and subpoenas, and -- but
 11 whatever.
 12 MS. HA: You know what, Mr. Fink, I
 13 want to thank you for that, because I completely
 14 forgot. And I believe I did mention this earlier,
 15 but I wanted to move and strike this entire
 16 deposition testimony. Because as Mr. Fink so
 17 noted, this deposition testimony is absolutely
 18 irrelevant to the scope of the Michigan Freedom of
 19 Information Act. The Michigan Freedom of
 20 Information Act only requires production of records
 21 that is in the possession of the City of Detroit.
 22 And Mr. Stefani would have no knowledge as to what
 23 record the City of Detroit possessed.
 24 MR. FINK: So noted.
 25 MS. HA: Thank you.

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1 Q (Continuing by Ms. Ha) Mr. Stefani, did you, or
2 your staff or associate review or share the SkyTel
3 records with the Free Press or anyone else?
4 MR. FINK: I'll object on the same
5 basis that I've just made an objection.
6 MS. HA: So noted.
7 MR. FINK: Outside of the -- let me
8 say it. It is outside of the scope of the judge's
9 order. It is outside -- it is irrelevant to the
10 cause of action of the Free Press, and it's also
11 invasive of a privilege that the Free Press has
12 under the First Amendment and Michigan Law with
13 regard to sources. To allow a -- I assume you
14 believe potential source to either take himself out
15 of consideration as a source, would tend to narrow
16 the field of people who might be a source. And so
17 on that basis, and all of those bases, I'm
18 objecting.
19 And I am telling Mr. Stefani certainly if
20 he wishes to agree with that objection, he has his
21 right to do so, and we can argue that in front of
22 the judge as well.
23 MS. HA: I think Mr. Stefani would
24 like to clear his name. Mr. Stefani --
25 MR. FINK: (Interposing) I don't

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1 think Mr. Stefani's name is in issue. I think
2 there are a lot of other names that are in issue,
3 but not Mr. Stefani's.
4 But it's --
5 MS. MCPHAIL: (Interposing)
6 whatever. Let's go on.
7 MR. FINK: -- it's his right to agree
8 or not to agree.
9 Q (Continuing by Ms. Ha) Mr. Stefani, once again,
10 did you, or your staff or associate, review or
11 share the SkyTel records with the Free Press or
12 anyone else?
13 MR. FINK: You noted my objection,
14 and all of the three grounds.
15 A You know, Mr. Fink makes a good point. And that
16 is, if I were to say absolutely not, I didn't share
17 any records, I would clear myself of suspicion, but
18 I would narrow the field of other possible sources
19 of information that the Free Press might have used.
20 So I'm going to answer that question to -- only as
21 follows: I -- I followed to the letter both the
22 October 17th agreement and the November 1st
23 agreement.
24 And in that regard, I would like to add
25 that the judge made mention about this deposition

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1 being partly the result of me talking to the press
2 and saying that there was a Confidentiality
3 Agreement. And if you look at the second -- or,
4 the -- the second Confidentiality Agreement, it
5 specifically says that if I am contacted by the
6 press, I am allowed to answer that all the parties
7 entered into a Confidentiality Agreement, and we
8 settled this case by accepting less than we thought
9 we were entitled to.
10 Q (Continuing by Ms. Ha) Mr. Stefani, going back to
11 Exhibit Number 11, which I believe is the October
12 17, 2007 --
13 A (Interposing) Yes.
14 Q -- record.
15 A Tentative.
16 Q It's a tentative agreement.
17 A It says Settlement Agreement.
18 Q Prior to October 17th, did you give or review or
19 share the SkyTel records with anyone else?
20 MR. FINK: Asked and answered. Same
21 question.
22 MS. MCPHAIL: He didn't answer.
23 MR. FINK: Same objections.
24 MS. HA: So noted.
25 A Yeah. I am going to refuse to answer that

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1 question, because I think Mr. Fink makes a good
2 point, and that is if I did -- I know you're all
3 shaking your heads saying ahh, we figured it out.
4 But the point is that by -- if I were to say no to
5 that question, it would make it easier for the city
6 to identify the source, because there'd be one less
7 suspect. So I'm -- I will answer if the judge
8 orders me to answer it. But in view of Mr. Fink's
9 objection, I'm going to decline to answer it.
10 Q (Continuing by Ms. Ha) Did you at any time provide
11 a copy of the SkyTel record to counsel for the City
12 of Detroit?
13 MR. FINK: Same objection.
14 MS. MCPHAIL: No.
15 MR. FINK: Well, he's answered it.
16 He answered it.
17 MS. HA: Well, your objection is
18 noted, Mr. Fink.
19 A Absolutely not.
20 Q (Continuing by Ms. Ha) Do you have a copy of the
21 SkyTel record now?
22 A I just told you, I didn't breach this agreement.
23 And the agreement called me to turn over those
24 records. I turned over the -- the agreement says I
25 am to turn over the printout, or whatever it says,

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1 copies made by me. I turned over the original and
2 any copies that I made. And they have everything.
3 I don't have anything. Somebody has it. When I
4 say they, I don't know. I presume Mitchell's got
5 it or the mayor and Beatty have it.
6 Q Did you ever receive the SkyTel records from anyone
7 else, other than pursuant to the subpoenas you
8 issued or your firm issued?
9 A No.
10 Q Do you have any idea how Free Press got the SkyTel
11 record?
12 MR. FINK: Same objection that I've
13 made before. The objections being that it's
14 outside the scope of the judge's order, it's
15 irrelevant to the cause of action, and it's
16 invasive of the Detroit Free Press' privilege.
17 MS. HA: Noted.
18 A Yeah, I have an idea.
19 Q (Continuing by Ms. Ha) Who do you think gave the
20 SkyTel records to the Free Press?
21 MR. FINK: Same objection.
22 Q (Continuing by Ms. Ha) What's your idea?
23 A And I'm not going to answer, because as I told you,
24 Mr. Fink raises a good point. I mean, he -- by
25 clearing myself, I could be implicating somebody

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1 else. And I -- I personally believe whoever did
2 furnish this information to the Free Press, did the
3 city a service, because it did disclose obvious
4 mistruths. And this whole thing could have been
5 avoided if Christine Beatty had taken my phone call
6 before there was any lawsuit, just talked to me
7 about the mistake they made with Gary Brown. She
8 said, "No. It's a one-day news story." And so,
9 therefore, I think whoever did it should get an
10 atta-boy. But I'm not going to tell you who I
11 think it was.
12 Q As to the private agreement which is Exhibit Number
13 13, who signed the agreements?
14 A You know, I signed on behalf of Brown, Nelthorpe
15 and Harris. Then I signed on behalf of the firm.
16 And Mr. Kilpatrick -- or, Mayor Kilpatrick and
17 Christine Beatty signed the agreements. It's their
18 handwriting. I mean, I presume it's their
19 handwriting. I took the representation of Mr.
20 McCargo that it was their handwriting, and I
21 believe it to be both Beatty and Kil -- or, Mayor
22 Kilpatrick's signatures.
23 Q How many copies of the agreements were made by you
24 or your firm, still talking about Exhibit Number
25 13?

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1 A Well, we were trading e-mails back and forth,
2 negotiating little changes to the language. When
3 it was finalized, Mr. McCargo had the mayor and
4 Christine Beatty sign it. And when we closed --
5 oh, wait a minute. Let me see a minute. No. When
6 we had the closing on December 5th, I received one
7 or two copies of this agreement with the mayor and
8 Beatty's signature. And we executed probably
9 about -- I don't know, maybe five or six of them.
10 And Mr. McCargo took everything except the two that
11 I took.
12 Now, we have since made copies for this
13 deposition, but we haven't made any copies -- since
14 December 5th and this deposition, we haven't made
15 any copies to those agreements of Exhibit 13. And
16 the only purpose we made them today, is to give
17 them to the attorneys here at this deposition.
18 Q To your knowledge, other than yourself and your
19 firm, who else has a copy of this agreement, to
20 your knowledge?
21 A Confidentiality Agreement? Absolutely nobody. I
22 didn't even give this -- I don't believe I gave
23 this to Brown and Nelthorpe. I told them that I
24 executed something, but -- a Confidentiality
25 Agreement which was very similar to the language

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1 in -- in the October 17th agreement, but I don't
2 even think I gave them these, this document.
3 Because we took the obligation to keep this
4 confidential seriously, very seriously. Because,
5 you know, nobody wanted to pay back any money to
6 the city. I mean, that money is owed -- that was
7 owed to my clients based on a jury verdict and the
8 court rules. And that is -- you know, we didn't
9 want to see them go through years of problems and
10 then have to end up regurgitating or rebating if
11 you will some of the money to the city.
12 Q To your knowledge, was any city official, employee
13 or attorney given a copy of Exhibit 13?
14 A City attorney, employee --
15 Q (Interposing) Or city official.
16 A No, no.
17 Q Okay
18 A The only copies are the two that I took, and the
19 four or five that McCargo took. And he made it
20 clear that they were not to get this. I mean, at
21 one time while we were signing this, I passed it
22 toward Ms. Osamuede. And he says, no, no, that's
23 between -- that stays with McCargo.
24 Q Okay. Mr. Stefani, you had indicated earlier that
25 you have some idea as to who gave the SkyTel

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1 records to the Free Press. Just for the record,
2 you do understand that unless I'm grossly
3 misunderstanding, you are not a representative of
4 the Detroit Free Press, is that correct?
5 A Heck no.
6 Q You're not being paid by the -- you're not in any
7 ways legal counsel to Detroit Free Press, or you
8 don't have a contract with Detroit Free Press for
9 any services?
10 A No. The Detroit Free Press hires lawyers from
11 places like Clark Kline, and Bodman Longley, and
12 Dykema, and Mr. Herschel's firm. They don't hire
13 Stefani and Stefani.
14 Q Okay. So you are not an agent or a representative
15 of the Detroit Free Press, correct?
16 A Absolutely not in any way.
17 Q Then I'd like to know why you're asserting the
18 privilege on behalf of the Free Press.
19 MR. FINK: He's not. I am.
20 MS. MCPHAIL: She's not asking you,
21 Mr. Fink.
22 MR. FINK: I don't care. I'm a --
23 all right. Objection to the form of the question.
24 MS. MCPHAIL: All right.
25 MR. FINK: I am the one who is

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1 asserting that particular portion of the privilege.
2 I was also pointing out, for the record,
3 that this is beyond the scope of Judge Colombo's
4 order of this deposition, which dealt with the
5 subject matter of the Free Press' FOIA request.
6 It is also outside of the scope of the
7 lawsuit. It is not relevant in any way, shape or
8 form to the Free Press' lawsuit relating to the
9 city's withholding of confidential settlement
10 documents which, of course, we got today in this
11 deposition.
12 So it's not relevant, it's outside the
13 scope of the order, and I added it also is invasive
14 of the Free Press' privilege. We have the right to
15 assert that. There is a lot of -- you're shaking
16 your head, Ms. McPhail. I've done it. I just did
17 it in a case involving --
18 MS. MCPHAIL: (Interposing) I know.
19 You're the authority on everything. But Mr.
20 Stefani doesn't have the right to assert a
21 privilege for you, and you coached him not to
22 answer the question. That's what you did a few
23 minutes ago. So just for the record --
24 MR. FINK: (Interposing) Well, I'm
25 shocked that you would accuse me of coaching

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1 anybody.
2 MS. MCPHAIL: You absolutely did.
3 MR. FINK: I have a right and an
4 obligation to raise my client's privilege, and Mr.
5 Stefani --
6 MS. MCPHAIL: (Interposing) I know.
7 And if your client were the deponent, that would be
8 perfect, but he's not. Mr. Stefani doesn't have a
9 right to protect your privilege.
10 MR. FINK: Well, I'm glad you --
11 MS. MCPHAIL: (Interposing) It's
12 further evidence of a conspiracy between the Free
13 Press, Mr. Stefani, and some other folks that we
14 all know about.
15 MR. FINK: Well, we know that there's
16 a conspiracy that was revealed here today.
17 MS. MCPHAIL: Right. And it involves
18 you.
19 MR. FINK: And it doesn't involve me.
20 MS. MCPHAIL: Yes, it's does.
21 MR. FINK: It involves the folks on
22 your side of the table --
23 MS. MCPHAIL: (Interposing) It
24 involves you.
25 MR. FINK: -- and others, including

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1 the mayor.
2 MS. MCPHAIL: I'm surprised that Mr.
3 Stefani would participate in this. Frankly I
4 didn't think he was at all involved with you, but
5 clearly he is.
6 MR. FINK: So you say, Ms. McPhail.
7 MS. MCPHAIL: We'll see.
8 Go ahead.
9 Q (Continuing by Ms. Ha) Mr. Stefani --
10 A (Interposing) I can answer your question. I told
11 you that if I were to deny being a source -- or, I
12 mean -- I'm sorry. If I were to tell you who I
13 suspected gave these documents, it would narrow the
14 field down. And I firmly believe that whoever did
15 this, did a service. Well, they certainly did a
16 service to --
17 Q (Interposing) That wasn't the question I asked.
18 MR. FINK: Let him finish answering.
19 A You just asked me why I didn't answer it though.
20 And, I mean, he objected. I don't have to follow
21 his instructions. I could answer if I wanted to.
22 But I sincerely believe I will want to protect
23 whoever did this, because I think they did a
24 service. And I think like shame on you for
25 worrying about that stuff. You ought to be worried

1 about the wrongdoing that the mayor -- you know,
2 maybe the city didn't do any wrongdoing, but you
3 certainly defended him vigorously, and he was lying
4 since day one in his deposition.

5 Q (Continuing by Ms. Ha) To your knowledge, has
6 there ever been an order of any -- order of any
7 court determining the status of the SkyTel records?

8 MR. FINK: If you understand it. I
9 don't.

10 Q (Continuing by Ms. Ha) For example, was there any
11 court determination pertaining to the -- either the
12 privileged contents or the protection of the actual
13 text messages? Has any court ruled on that issue?

14 MR. FINK: Object to the form of the
15 question. I don't even understand what the
16 question is.

17 MS. HA: Well, you don't have to
18 understand it. Mr. Stefani has to understand the
19 question.

20 MR. FINK: Yeah, but I have to
21 protect the record and make an objection.
22 A The judge, when I filed my -- when I served SkyTel
23 a subpoena the first time, and the city came in and
24 objected, and the city -- I filed a second
25 subpoena, and the city objected again, the judge

1 blanks are filled in, you know, Gary Brown and
2 Harold Nelthroe versus Kwame Kilpatrick and the
3 City of Detroit. It's directed to SkyTel, keeper
4 of the records. And it's dated October 5th, 2007,
5 ten a.m. And -- but it's not signed. It looks
6 like it was prepared by Frank Rivers, my associate
7 or partner. And I don't know whether -- I don't
8 know whether this is the subpoena that was sent to
9 SkyTel, or -- and it could have been. Without a
10 signature, I doubt if they would have accepted it.

11 Let's see. What does it say here? It's
12 got a date of 1-30-2008, a fax from Lewis and
13 Munday. So I don't know what it is. It could be a
14 draft of a -- or, it's possible that my assistant
15 Roquia was on her toes and sent out the subpoena
16 with the -- and then I told Frank to send it out,
17 and he started doing it and found out that it was
18 the second -- that there had already been one sent
19 out. So that's the best I can answer the question.
20 I really don't know what this is. Sorry.

21 Q Did your firm, or you or Mr. Rivers, issue a
22 subpoena to SkyTel on October 5th, 2007?

23 A No. Wait a second. I misspoke to you. This
24 subpoenaed wasn't issued October -- if I said the
25 issue date was Friday, October 5th, I'm mistaken.

1 ruled that they were proper discovery. And prior
2 to that time, in the prior suit with the Free
3 Press, I'm not -- I'm not sure you're aware of it,
4 but, you know, in the same Brown and Nelthroe
5 suit, the judge ruled that discovery information
6 was not going to be suppressed, and the public had
7 a right to know 'cause it's a whistle-blower. So
8 if you apply that same reasoning to these SkyTel
9 records, I would interpret it that the same logic
10 applies.

11 However, no specific order has ever
12 been -- that specifically addresses the SkyTel
13 records has been issued.

14 Q (Continuing by Ms. Ha) Okay.

15 A I hope that answers your question.

16 Q It does. I'm going to show you what I'm going to
17 mark as Exhibit 19. And I apologize, but I only
18 have one copy, so I'm going to show the attorneys
19 first, and then...

20 (WHEREUPON THE COURT REPORTER MARKED
21 DEPOSITION EXHIBIT NUMBER 19.)

22 A Now, what is your question, ma'am?

23 Q (Continuing by Ms. Ha) The question is, can you
24 identify what that is, Exhibit Number 19?

25 A Well, obviously it's a form of a subpoena. And the

1 That's the production date. The issue day is
2 September 28th, '07. So that the day it was
3 supposed to be signed by Rivers and sent out, would
4 have been September 28th, '07. And they -- and
5 SkyTel was ordered to return the documents on
6 Friday, October 5th, 2007, at ten a.m.

7 And your question was did we ever send it?

8 Q Yes.

9 A I'm sorry. Would you repeat the question?

10 Q Did you send that -- did you send that subpoena, a
11 copy of which you see, to SkyTel, Exhibit Number
12 19?

13 A I don't know. I don't know. This -- this could be
14 an unsigned copy. In other words, we may have
15 made -- we may have made photocopies of the
16 subpoena for purposes of serving the other side and
17 for our records, prior to Frank signing it. And
18 then when he signed it, the photocopies that were
19 made didn't show his signature, because he only
20 signed the one that went to SkyTel. That would be
21 my guess. But I really don't know, and I'm not
22 sure.

23 Q You had indicated earlier that SkyTel was to
24 forward the text messages to Judge Callahan only.

25 Can you indicate where on that subpoena that

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1 indicates that?
 2 A It doesn't. The -- I told you that Judge Callahan
 3 wrote in 2004, after the city filed their second
 4 motion to suppress, my second subpoena, the judge
 5 said, "well, I'll tell you what, have the records
 6 sent to me." And this subpoena, which was issued
 7 on 9-28-07, after the trial, tells them to send it
 8 to Stefani and Stefani.
 9 Q Now, you had indicated that the trial was over on
 10 September 11th. A jury rendered a verdict on
 11 September 11th. Why did you subpoena the SkyTel
 12 text records?
 13 MR. FINK: Asked by me and answered
 14 by Mr. Stefani. He can answer it yet again.
 15 A Well, I subpoenaed the records during the trial.
 16 And we were told that we couldn't get those records
 17 because of some corporate reorganization or
 18 something. And then through investigation, I
 19 learned that the records were available, so I sent
 20 out another subpoena, because there was still going
 21 to be post trial motions. I mean, I firmly
 22 believe -- I mean, no question in my mind that the
 23 mayor lied through his teeth, and so did Beatty.
 24 And I knew there were going to be post trial
 25 motions, because you probably saw the mayor's

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1 speech on TV where he blamed the make-up of the
 2 jury, and he was blown away by the results. So I
 3 expected them to file motions for new trial,
 4 motions for directed -- or, verdict JNOV. And I
 5 wanted to obtain the records, especially after I
 6 had found out that the jury was deprived of these
 7 records really through the chicanery of somebody
 8 from the city who told SkyTel not to honor the
 9 subpoena until the judge ruled, and then never
 10 brought the motion up for hearing. So I felt
 11 like -- and, you know, I felt like I had been
 12 tricked. I felt like it was dishonest. And I
 13 wanted to see what was in those records for post
 14 trial motions.
 15 Q (Continuing by Ms. Ha) When did you first receive
 16 and see the SkyTel records?
 17 MR. FINK: Asked and answered. He
 18 even produced the cover letter. Do you remember
 19 that, Ms. Ha?
 20 MS. HA: It hasn't been entered.
 21 MR. FINK: No. But you have them.
 22 A Yeah, that's --
 23 MR. FINK: (Interposing) And he
 24 testified to it.
 25 Q (Continuing by Ms. Ha) Okay. I'm going to enter

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1 Exhibit Number 18, and --
 2 MR. FINK: There already is an 18 if
 3 I am not mistaken.
 4 MS. HA: I didn't enter it.
 5 A Well, she --
 6 MS. HA: (Interposing) I did a
 7 Herschel Fink.
 8 MR. FINK: No. I thought there was
 9 another one. Okay.
 10 MS. HA: Okay.
 11 MR. FINK: I thought I had one. I
 12 stand corrected.
 13 Q (Continuing by Ms. Ha) Okay. Exhibit Number 18 is
 14 the letter that you produced dated October 4, 2007.
 15 Now, can you tell me why the shade is darker on
 16 October 4, 2007?
 17 A Oh, that's -- that's my yellow highlighting.
 18 Q Okay.
 19 A See, my copy of it is highlighted in yellow,
 20 because -- I've got a copy here somewhere, and --
 21 well, it doesn't show yellow either. But the
 22 original one had yellow. And the original one
 23 actually had the overnight expressed envelope
 24 attached to it. And those were turned over to Mr.
 25 Mitchell. So if you don't believe me, that I

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1 highlighted it in yellow, it certainly wasn't
 2 changed. It wasn't whited out, if that's what you
 3 think.
 4 Now, it says October 4th. I'm not sure
 5 whether we got it on the 5th, or the 6th, but it
 6 was a day or two after it, because obviously we
 7 couldn't get it the same day he over-nighted it to
 8 us.
 9 Q And for the record, would you identify what Exhibit
 10 18 is?
 11 A Yeah. 18 is a letter to me, dated October 4th,
 12 2007, from a Stephen M. Oshinsky, Director, Systems
 13 Engineering, SkyTel; Subject: Case Number
 14 03-317557-NZ.
 15 And do you want me to read it, or is that
 16 good enough?
 17 Q That's good enough.
 18 A Thank you.
 19 Q Thank you, Mr. Stefani.
 20 Mr. Stephen M. Oshinsky, was he the
 21 gentleman that you were referring to who used to
 22 work for the --
 23 A (Interposing) No.
 24 Q Okay. Would it be fair to state, Mr. Stefani, that
 25 you had the SkyTel text messages before the October

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1 17, 2007 facilitation?
 2 A Yes.
 3 Q Why did it take you so long -- well, assuming you
 4 had the SkyTel text messages on October 5th, and
 5 the facilitation was on the 17th, that's twelve
 6 days, almost two weeks. Why did it take you so
 7 long to share that part of -- or, the SkyTel text
 8 messages with -- I'm sorry, strike that.
 9 There had been -- from October -- assuming
 10 that you had the SkyTel text messages on October
 11 5th, 2007, you clearly knew that there was...
 12 MR. FINK: Perjury?
 13 Q (Continuing by Ms. Ha) You indicated that you
 14 served the subpoena on September 28th on the city,
 15 is that correct, for the SkyTel records?
 16 A What? What did you say?
 17 Q I'm sorry. You indicated that you served the
 18 subpoena on the 28th for the SkyTel records, is
 19 that correct?
 20 A 28th of?
 21 Q September.
 22 A No, I didn't say that. I said I gave them a copy
 23 of the subpoena at that night we sat in here on the
 24 17th and hacked out the proposed or tentative
 25 Settlement Agreement. I served them each with a

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1 copy of the subpoena.
 2 Q When you sent it to SkyTel, Exhibit Number 18, did
 3 you serve the subpoena to the City of Detroit or
 4 its attorneys at the same time?
 5 A The first subpoena that we sent to -- now, the
 6 first subpoena in 2007, September, 2007, during the
 7 trial, you know, I believe --
 8 Q (Interposing) After the trial.
 9 A No. The first subpoena went to SkyTel during the
 10 trial. And that's when we were told the records
 11 weren't available. I believe I -- my staff sent
 12 them a copy of that, but I'm not certain.
 13 The second subpoena, the one that you're
 14 showing me today, which is dated September 28th,
 15 '07, I didn't serve the city with a copy until that
 16 October 17th facilitation.
 17 Q Okay. Do you have all of the envelopes from SkyTel
 18 in which the records were contained?
 19 A Well, there was only one envelope. It was an
 20 overnight. It was a -- like what do you call it?
 21 Like you know what I'm talking about.
 22 MR. ZUCKERMAN: Fed-Ex?
 23 A Fed-Ex. That's what it was, Fed-Ex. And I believe
 24 that went to Mitchell, because I know I showed it
 25 to the attorneys. They said where are these

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1 records, when we were here on the 17th. And I have
 2 this safe back here that used to be in my father's
 3 office. And it's kind of old and rickety, but I
 4 opened it up and I said, "They are right here."
 5 And I showed them the Fed-Ex envelope.
 6 And when I turned over the e-mails -- or,
 7 I turned over the -- when we turned the escrow --
 8 I'm sorry. When I turned the CDs and all the other
 9 documents I told you I turned over to the escrow
 10 agent, I don't think I gave them an envelope. I --
 11 in other words, I believe I left this out. When I
 12 say this, I'm talking about the envelope and --
 13 Q (Interposing) The second page of Exhibit 18?
 14 A And the first page of Exhibit 18. I believe I left
 15 that out. And McCargo said, "You know that
 16 document, that envelope you showed us with the
 17 thing? We probably ought to get that, too." And
 18 this was after I turned everything over to them.
 19 And I said, "Oh, yeah. I think it's still in my
 20 safe." And I either gave it to Mitchell or -- I
 21 think I sent it to Mitchell. But, yeah, I'm
 22 almost -- I'm pretty sure I gave it to Mitchell.
 23 Now, the envelope I might have just thrown
 24 away. But I know the -- wanting these two pages of
 25 Exhibit 17 or 18 -- 18, I know I sent to Mitchell,

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1 because McCargo said, "Hey, you know that envelope
 2 you showed us in your safe that night? We probably
 3 ought to get that too."
 4 Q On September 11, 2007, the day when a jury verdict
 5 came in for the Brown case, were you present?
 6 A Oh, yeah.
 7 Q Did you ask the judge about the SkyTel records on
 8 September 11th?
 9 A Did I ask him about the SkyTel records?
 10 Q Yes.
 11 A No. I thought -- you know, my recollection is that
 12 he told us to re-subpoena those records a couple of
 13 days before the trial was over.
 14 (WHEREUPON RICHARD ZUCKERMAN, ESQ.,
 15 LEFT THE DEPOSITION ROOM.)
 16 A So I don't remember discussing it on the last day,
 17 but it's possible. You know, there was a lot going
 18 on.
 19 You mean in open court, of course? That's
 20 the only place I talked to him about it.
 21 Q (Continuing by Ms. Ha) What happened to the
 22 records of -- that Judge Callahan had? You didn't
 23 ask him about those records, the SkyTel records?
 24 MR. FINK: It's been asked and
 25 answered.

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1 A No.
2 MR. FINK: He's testified about this
3 already.
4 A No. What I said, and I understand it's confusing,
5 while Christine Beatty was on the witness stand, I
6 thought the judge had the records. I didn't know
7 anything about this someone from the city calling
8 SkyTel and saying don't send the records. I
9 thought the judge had the records.

10 When I got done cross-examining Beatty, I
11 asked her specific questions: Did you send to the
12 mayor or receive from the mayor a message
13 discussing Gary Brown, termination? No. Did
14 you -- so, you know, I asked a whole series of
15 questions thinking the judge had it. When she
16 got -- when she was done, I then asked the judge
17 where are those records. He told me he thought I
18 had them. I said, "Well, why would I have them?
19 They were to be sent to you?" And we were both
20 kind of befuddled.

21 Q (Continuing by Ms. Ha) Do you remember the judge
22 saying that he couldn't find the records?

23 A Yes, you're absolutely correct. I don't believe
24 that was the last day. But Mr. McCargo argued
25 rather vercif -- rather adamantly that the judge

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1 had the records. And the judge said, "I don't have
2 them, or if I did, I lost them, re-subpoena them."
3 And it was in the process of re-subpoenaing them I
4 found out SkyTel never sent them. The judge
5 couldn't have had the records, because they told me
6 we've never sent them, because we got a call from
7 the city.

8 Q Do you recall the day when you put the settlement
9 on the record with Judge Callahan?

10 A Yes.

11 Q Would it be fair to say that was December 11, 2007?

12 A You know, I don't remember.

13 Q Okay.

14 A But if you -- if you represent that, I'll take your
15 word for that.

16 Q Thank you. Who was present at the settlement that
17 was before -- who was present at that -- that day
18 when you presented the settlement to Judge
19 Callahan?

20 A Gary Brown, Harold Nelthrope, me, I believe -- I
21 know Ms. Osamuede, and I'm -- and I know McCargo
22 was present, and I believe, but I'm not certain,
23 that Mr. Copeland was present.

24 Q Okay.

25 A But he may not have been, because I think he wanted

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1 to adjourn that date because he was going to be out
2 of town, and the judge said no, I want you in here.
3 And Mitchell was in the back of the courtroom, but
4 he didn't participate in the settlement. I mean,
5 he didn't put anything on the record.

6 Q How do you know what Mr. Mitchell looks like, if
7 you've only heard of him?

8 A Well, do you want to know the honest truth?

9 Q Sure. Don't we want the honest truth?

10 A Until I saw the picture in the paper, I didn't know
11 what -- I mean, I met -- years ago Mitch -- when I
12 moved out of an office in Troy, Mitchell moved into
13 it. And Brown knew him. And I asked Brown, "Who's
14 Mitchell?" And he said, "Mitchell's that guy that
15 rented your office in Troy." And I still couldn't
16 picture him. But when I saw the picture in the
17 Free Press either yesterday or today, I recognized
18 him. But I didn't recognize him in the courtroom
19 that day. Brown did though. He said, "Did you see
20 Mitchell sitting in the back?" And I said, "No."

21 Q Okay. Was there a point when the judge asked Mr.
22 Brown and Mr. Nelthrope to come into the -- to come
23 into his chambers --

24 A (Interposing) He asked --

25 Q (Interposing) -- that day?

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1 A I think he asked Brown, Nelthrope and me to come
2 into the chambers.

3 Q Okay. What -- what was said in chambers?

4 A He really asked both men what they were going to do
5 in the future, what their plans were, and wished
6 them -- that they would get on with their lives or
7 something like that, right. You know, put this
8 behind you, get on with your life.

9 Q Anything else?

10 A Oh, he asked -- that's right. Most of the rest of
11 the conversation, Judge Callahan has a -- quite an
12 interesting family of adopted children. He has,
13 you know, like two or three African American
14 children, and I think I believe an oriental child.
15 And he was telling us where they go to school and
16 what they do. And that was it.

17 MS. HA: Okay. For the record --

18 MR. FINK: (Interposing) Asian.

19 MS. HA: Asian. Thank you, Mr. Fink.

20 MR. FINK: That's fine.

21 A What's the difference? I mean, wait a minute.

22 MS. HA: Oriental is supposed to be a
23 derogatory term.

24 A Oh, I'm sorry.

25 MS. HA: Yeah, that's okay.

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1 A No. I'm sorry. I wouldn't do that in front of
2 Judge Callahan then. I'm glad you warned me.
3 Jesus, oriental is derogatory?
4 Q (Continuing by Ms. Ha) Did your clients ever
5 discuss with you what was said in chambers?
6 A I was with them.
7 Q Oh, I'm sorry.
8 A I sat right with them.
9 Q I forgot.
10 Do you also recall that Judge Callahan had
11 asked Mr. Elrick from the Free Press to wait and to
12 come back after the judge speaks to you and Mr.
13 Brown and Mr. Nelthrope?
14 A You know, I don't recall the judge asking Elrick.
15 But I think Elrick tried to get in to see the
16 judge, and he -- and he told Elrick or Schaefer to
17 wait until we were done. I don't know whether he
18 initiated that contact or they initiated it. I
19 just remember him saying something like, "Well,
20 just have a seat. I'm going to be with these guys
21 for a few minutes."
22 Q Okay. Were you in chambers when the judge talked
23 to Mr. Elrick?
24 A Oh, no.
25 Q Do you have any reason to know what is in the City

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1 of Detroit's files?
2 A On what, ma'am?
3 Q On the Brown/Nelthrope, the cases that you
4 represented, the cases that you represented, the
5 Brown/Nelthrope and Harris case.
6 A I've never seen the files, but I presume that when
7 I've sent e-mails to Ms. Osamuede, she probably
8 either kept an electronic copy of it, and when the
9 documents -- when the final -- when we had the
10 closing on December 5th, she took a stack of
11 documents too. But I -- I think I already made
12 that clear, that she did not, in my presence, have
13 this so-called Confidentiality Agreement. Because
14 that's the one I was going to pass to her, and
15 McCargo said, "No, that doesn't go for her
16 signature. That stays with me." And he took it
17 back.
18 So other than thinking that those
19 documents that she took out of that conference are
20 in that file, I'd have no other way of knowing it.
21 I surely didn't see the file.
22 Q Okay. Now, going back to the October 17, 2007
23 record, which is Exhibit Number 11?
24 A Yes.
25 Q Would you agree with me that this is a --

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1 A (Interposing) It's not a draft as you said before.
2 It is a contract, signed and sealed and delivered.
3 Q No, no. I'm talking about --
4 A (Interposing) But it has --
5 Q (Interposing) -- Exhibit 11.
6 A Oh, I'm sorry.
7 MR. FINK: Wait a second.
8 A I'm sorry. No, this is a signed, sealed, and
9 delivered contract. However, it has a condition
10 precedent in it, which means that the obligations
11 of the parties -- well, you know what a condition
12 precedent is. It had to be approved by the city
13 council. And if they didn't approve it, and the
14 mayor didn't approve it, then it ceased to exist.
15 And I think we even have a phrase in here that says
16 if it's not approved -- "As a condition precedent
17 to this Agreement becoming operative", becoming
18 operative, "the monetary terms of this settlement
19 must be approved by Gary Brown, and Harold
20 Nelthrope, and Walter Harris, Mayor Kwame
21 Kilpatrick, and the City of Detroit. Brown and
22 Nelthrope shall have 24 hours to approve it." And
23 they did.
24 Q They approved this?
25 A Absolutely. Well, the terms of it, yes. I sent

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1 this to them.
2 And then, "Brown and Nelthrope shall have
3 24 hours to approve. Walter Harris shall have 10
4 days to approve this Agreement in writing, and the
5 City shall have 10 days to approve it in writing.
6 The City -- the City shall have 45 days from the
7 date hereof to obtain the approval of the City
8 Council, and notify Stefani and Stefani of such
9 approval in writing. In addition, the City and the
10 Mayor shall have 21 days after approval of the City
11 Council to deliver the settlement check..." "In
12 the event of a failure to pay" -- I'm sorry. "In
13 the event of a failure of any party to meet the
14 time deadlines set forth in this Paragraph 8, this
15 Agreement shall be null and void."
16 So it's really semantics. This was a
17 contract. But by its own terms, it didn't become
18 operative or require performance until this
19 condition precedent was met. It was never met, and
20 then it became null and void.
21 Q Thank you. You testified earlier, going back to --
22 taking you back to the facilitation day, you had
23 indicated that it dawned on somebody that the city
24 wouldn't want to produce the tentative agreement.
25 A The tentative agreement, the one I just referred

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1 to, paragraph -- I mean, the one I just read to
2 you. It's entitled Settlement Agreement. It has a
3 confidentiality provision in it. But the title is
4 Settlement Agreement. And we've been referring to
5 it as tentative agreement, although from a legal
6 standpoint I just explained to you that it is a
7 binding contract subject to a condition precedent,
8 which never -- so it never became -- the parties to
9 it were not required to perform their obligations
10 under that agreement, because it was not -- the
11 condition precedent never arose.

12 MR. FINK: For clarity, that's
13 Exhibit 11.

14 MS. HA: All right.

15 Q (Continuing by Ms. Ha) Who did you talk to about
16 the agreement? How do you know that it dawned on
17 somebody at the --

18 A (Interposing) Oh, oh, oh, oh, oh.

19 Q Isn't that your assumption that it dawned on
20 somebody?

21 A Yes.

22 Q Okay.

23 MR. FINK: Is there more to your
24 answer than yes?

25 MS. MCPHAIL: Excuse me, but you're

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1 entitled to a million dollars of attorney's fees.
2 (WHEREUPON Lines 2 through 7
3 were stricken from the
4 record as per Hon. Robert
5 Colombo's instruction
6 -----
7 -----.) So I said,
8 "Just show it to McCargo." He's the -- he's the
9 one who, even though he's co-council with Ms.
10 Osamuade, he's -- he took the lead. He was the
11 lead lawyer.

12 (WHEREUPON A BRIEF PAUSE WAS HAD IN
13 THE PROCEEDINGS, AND ELLEN HA, ESQ.,
14 AND VALERIE COLBERT-OSAMUEDE, ESQ.,
15 LEFT THE DEPOSITION ROOM.)

16 MS. MCPHAIL: Let me just say for the
17 purposes of expediting the rest of this, I just
18 have a few questions, and everyone's agreed that I
19 can ask them so we can all go home.

20 MR. FINK: Agreed.

21 MS. MCPHAIL: Because our attorney
22 had to leave the room, she's not feeling well.

23 EXAMINATION

24 BY MS. MCPHAIL:

25 Q Mr. Stefani, you participated in the drafting of

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1 not asking the questions. She's asking the
2 questions right now.

3 MR. FINK: Well, it seemed like he
4 didn't finish his answer.

5 MS. MCPHAIL: No, no. It's
6 inappropriate.

7 Go on, ask your questions.

8 Q (Continuing by Ms. Ha) Why did you ask the
9 facilitator to show the text message -- or, the
10 motion which you indicated had the explicit details
11 of the text message to Mr. McCargo?

12 MR. FINK: This was also testified
13 to.

14 MS. MCPHAIL: Okay, but --

15 MS. HA: (Interposing) He didn't say
16 why he asked the facilitator to -- facilitator to
17 just show to it Mr. McCargo. And I believe --

18 MR. FINK: (Interposing) Yes, he
19 did.

20 MS. HA: I believe he also said he
21 didn't want the facilitator to look at it, but he
22 wanted it -- to deliver it to Mr. McCargo.

23 Q (Continuing by Ms. Ha) What was your intention,
24 Mr. Stefani?

25 A Well, I think these records showed that we were

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1 the Confidentiality Agreement, didn't you?

2 MR. FINK: Exhibit 11?

3 MS. MCPHAIL: Yeah.

4 MR. FINK: Okay.

5 A Yes.

6 Q (Continuing by Ms. McPhail) Okay. And --

7 A (Interposing) You mean a Settlement Agreement,
8 Exhibit --

9 Q Oh, no. I'm sorry.

10 MR. FINK: No, no, no, no.

11 MS. MCPHAIL: That's the wrong
12 exhibit. I'm talking about the Confidentiality
13 Agreement that we're all --

14 MR. FINK: (Interposing) The last
15 one?

16 MR. STEWART: Yes. Refer to the
17 exhibit number, please?

18 MS. MCPHAIL: What's the exhibit
19 number?

20 MR. FINK: Exhibit 11.

21 MS. MCPHAIL: There it is. That
22 exhibit.

23 A No, no. This is supplement to the escrow.

24 MR. STEWART: What number is it,
25 please? What number are you referring to?

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1 MR. FINK: 11.
2 A I think they're all right here. Let's just find
3 them so we can --
4 MS. MCPHAIL: (Interposing) Yeah.
5 Because I didn't get copies that were labeled.
6 MR. FINK: No. You know what, I'm
7 sorry. I'm screwing this up. It's actually 13.
8 MS. MCPHAIL: This (indicating).
9 MR. FINK: 13. That's 13. It's 13.
10 MS. MCPHAIL: Okay. This is 13.
11 Number 13. All right.
12 Q (Continuing by Ms. McPhail) Number 13, you
13 participated in that?
14 A Absolutely.
15 Q And it involves your clients' records? You didn't
16 want -- they didn't want their records produced
17 either, correct?
18 A That's correct.
19 Q Okay. So could you describe just briefly, not a
20 long one, your clients' concerns regarding the
21 release of their own records?
22 A Well, they contained personal matters, and they
23 didn't want that out in public.
24 Q Okay. So, you know, that was their reason for the
25 agreement.

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1 A Yeah.
2 Q Okay.
3 A Yeah.
4 Q And you said you believe the mayor gave Christine
5 Beatty twelve thousand dollars. Why do you believe
6 that?
7 A Because my confidential source told me that Beatty
8 told him -- Beatty told the mortgage broker -- or,
9 the banker for Fifth/Third Bank, that she would get
10 the twelve thousand dollars from the mayor. And
11 the guy said to her, "But it's got to be a gift.
12 You can't borrow a down payment." And she said,
13 "It will be a gift." And he said, "Well, no one
14 will believe it's a gift from the mayor. They'll
15 think it's a loan."
16 Q Okay. I remember all of that. No offense. Stop.
17 A I'm sorry. I'm just explaining it.
18 Q I don't need you to explain it again.
19 A Yeah.
20 Q But what I'm asking you here is, who was your
21 source? Who told you?
22 A Oh, my God, I can't -- I wouldn't you tell that if
23 I knew.
24 Q Okay. So you're declining to answer that question?
25 A Absolutely.

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1 Q Okay. Do you know or have any information as to
2 how the Free Press got SkyTel records?
3 MR. FINK: Wait a minute.
4 MS. MCPHAIL: Oh, I'm sorry. She
5 asked that.
6 MR. FINK: Yeah, we did that.
7 MS. MCPHAIL: Yeah. I'm sorry. She
8 asked that.
9 Q (Continuing by Ms. McPhail) Okay. You testified
10 that after the jury verdict, the judge told you to
11 subpoena the SkyTel records, suggested that you do
12 that?
13 A No. It was before the jury verdict.
14 Q Before the jury verdict?
15 A Oh, absolutely.
16 Q Okay. But not after? After the jury verdict, when
17 you subpoenaed them --
18 A (Interposing) No, I don't believe so.
19 Q When you subpoenaed them the second time --
20 A (Interposing) No.
21 Q -- that wasn't the judge telling you to do that?
22 A No, no, no.
23 Q Okay. I'm almost done. Okay. And one thing, Mr.
24 Stefani, it's just a little confusion on my part.
25 You said that the judge ruled in your favor as to

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1 the release of the SkyTel records. And we don't
2 have anything but these two orders, which grant in
3 part the Mayor Kilpatrick's motions to quash the
4 subpoenas for the SkyTel records. Do you have an
5 order in which the judge, Judge Callahan that is,
6 ruled in your favor in terms of release of the
7 SkyTel records?
8 A Yes. I don't know what you have there. That isn't
9 something I produced, is it?
10 Q Well, these are -- this is -- I don't know whether
11 you produced it or not, frankly.
12 (WHEREUPON VALERIE COLBERT-OSAMUEDE,
13 ESQ., RE-ENTERED THE DEPOSITION
14 ROOM.)
15 Q (Continuing by Ms. McPhail) These are the two
16 orders that the court ordered granting Mayor
17 Kilpatrick's emergency motions, you know, to quash
18 the --
19 A (Interposing) Yeah. But if you read those, those
20 are drafted by the city. And the -- and the title
21 of them is very misleading. If you read the order,
22 it says, "We grant the emergency motion in part,
23 but we order the SkyTel records" --
24 Q (Interposing) Produced to the court.
25 A Well, the second motion did that. I don't believe

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1 the first motion did that.
2 Q But they never ordered them produced to you? That
3 is, the judge never ordered SkyTel to produce the
4 records to you?
5 A Well I would say the first time, the subpoena that
6 I sent out the first time, instructed SkyTel to
7 produce the records for me. And the judge refused
8 to quash that subpoena. And so while he didn't
9 specifically order the first time that they go to
10 me, it was clear that by quash -- by refusing to
11 quash the subpoena, that the subpoena ordered the
12 records to go to me, as any discovery would
13 normally do.
14 Q And when did that happen? Was that before -- are
15 you talking about the first subpoena you issued?
16 A Yes.
17 Q The one before -- not the September 28th subpoena?
18 A No.
19 Q The one before that?
20 A There were actually -- like I believe there were
21 three.
22 Q Oh. I thought you said two.
23 A In September or October of 2004, I sent out a
24 subpoena. The city came in and did an emergency
25 motion to quash. The judge refused to grant their

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1 motion.
2 (WHEREUPON ELLEN HA, ESQ.,
3 RE-ENTERED THE DEPOSITION ROOM.)
4 A I sent out another subpoena.
5 Q (Continuing by Ms. McPhail) Did you get the
6 records then?
7 A No, no,
8 Q In 2004?
9 A No, no, I didn't.
10 Q Okay. All right.
11 A And then I sent out another one, and the city came
12 in with another one. And that's the -- I believe
13 that's the order that you're referring to in front
14 of you, is the order that was issued by the judge
15 or signed by the judge as a result of that second
16 subpoena. And then --
17 Q (Interposing) So basically you're interpreting.
18 The city drafted these. So what you're saying is
19 that the orders relative to the production of the
20 SkyTel records, you view as favorable to you,
21 although they're captioned emergency -- granting in
22 part defendants --
23 A (Interposing) Well, I think you're -- I think
24 there's only one order that --
25 Q (Interposing) There were two. Here they are. Let

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1 me show them to you.
2 MR. STEWART: Mark them as exhibits,
3 please?
4 MS. MCPHAIL: Yeah, okay. Let's mark
5 the first "Order Granting, In Part, Defendant Mayor
6 Kwame Kilpatrick's Emergency Motion To Quash
7 Subpoena For SkyTel Messaging Pager And For A
8 Protective Order." That's this one. I know it's a
9 lot of records. You probably may not remember.
10 But I'm trying to refresh your recollection on
11 this.
12 A Excuse me. Yeah. I want to make sure we're even
13 talking about the same case here, because,
14 "Granting In Part Defendant"...
15 (WHEREUPON THE COURT REPORTER MARKED
16 DEPOSITION EXHIBIT NUMBERS 20 AND 21,
17 RESPECTIVELY.)
18 A Yes. This -- this order's dated August 26th. And
19 it's -- it's the judge doesn't quash the subpoena,
20 but he directs that SkyTel be told to send the
21 documents to him.
22 Q (Continuing by Ms. McPhail) Where in that
23 document, which is Exhibit Number 20, does it say
24 that SkyTel should send them to you?
25 A It doesn't. I -- in Exhibit 20? No. It says, "IT

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1 IS ORDERED that Defendant's Motion be granted, in
2 part, records" -- I'm sorry, "the records sought by
3 Plaintiffs' subpoena dated August 18th, 2004 and
4 directed to MCI Subpoena Compliance, care of SkyTel
5 Messaging Pager, Attention Bill Marsden", and then
6 an address, Northwest Washington, DC, "in lieu of
7 the subpoena direction in -- in lieu of the
8 subpoena direction, shall be filed with this Court
9 for an in-camera inspection pursuant to the
10 governmental deliberative process privilege; and IT
11 IS ORDERED that the contents of the records filed
12 with this Court in-camera, pursuant to this Order
13 shall be released only upon the further order of
14 this Court, at the time of trial upon a
15 determination by this Court that the release of
16 specific information contained therein is
17 appropriate for release."
18 Q Thank you. Okay. So it doesn't say that the
19 records should be produced to you?
20 A No.
21 Q In fact, by the very nature of the order, which is
22 that the records shall be produced in-camera, they
23 are not to be produced to you pursuant to that
24 Exhibit 20, right?
25 A Yes.

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1 Q Okay. So let me ask you to take a look at Exhibit
2 21, which is an "Amended Order Granting, In Part,
3 Defendant Mayor Kwame Kilpatrick's Emergency Motion
4 To Quash Subpoena For SkyTel Messaging Pager And
5 For A Protective Order." If you'd take a look at
6 this, please?
7 A Thank you.
8 Okay. This is dated September 27th.
9 MR. FINK: Do you want to see these,
10 or are we -- do we want to see these?
11 MR. STEWART: (Shaking head
12 negatively).
13 MR. FINK: No. Okay.
14 MS. MCPHAIL: I mean, technically I
15 guess I should hand them to you, but, you know...
16 MR. STEWART: That's all right.
17 A This order seems to be verbatim with the order
18 dated September 26th. It looks like it's
19 identical.
20 Q (Continuing by Ms. McPhail) Okay. So there's
21 nothing in that order, that is Exhibit 21, that
22 suggests that the records should be sent to you?
23 A No.
24 Q Is there any other order, of which you are aware of
25 the court, that either removes the records from

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1 here, Mr. Stefani, is that because you didn't
2 notify the city of your September 27th subpoena
3 until October 17th, the city was deprived of the
4 ability to come in and seek -- I'm sorry.
5 MS. MCPHAIL: When I'm done, you want
6 to object?
7 MR. FINK: No. I'm just telling
8 Mr. --
9 MS. MCPHAIL: Okay.
10 MR. FINK: I'm just waving and
11 encouraging Mr. Stefani not to answer --
12 MS. MCPHAIL: (Interposing) Not to
13 answer?
14 MR. FINK: -- until I put my
15 objection to the question.
16 MS. MCPHAIL: But you don't represent
17 Mr. Stefani, do you?
18 MR. FINK: I have a right to put on
19 an objection.
20 MS. MCPHAIL: I didn't say that. I'm
21 just trying to make sure. And I'm going to wait
22 for your objection, as soon as I can finish my
23 question.
24 Where were we? Would you read it back?
25 (WHEREUPON THE COURT REPORTER

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1 their in-camera seal, or allows the records to be
2 produced to you?
3 A The -- other than the verbal order the judge issued
4 from the bench on two occasions I believe during
5 the trial. He said re-subpoena the records.
6 Q Okay.
7 A And he says, maybe we'll get them in time. And he
8 didn't -- he didn't say have them sent to you. He
9 didn't have them -- he didn't say have them sent to
10 me.
11 And if you ask me why I had them sent to
12 me, is because I wanted to avoid the shenanigans
13 that the city had pulled to keep -- to keep them
14 confidential. If I had sent them to the judge --
15 again, the judge has got a lot of cases pending.
16 And I would have no way of knowing whether SkyTel
17 sent them to him. And a simple phone call saying,
18 hey, that matter's over with, the trial's over
19 with, don't bother, would have ended it.
20 Do you want some Pepsi?
21 MS. HA: Oh, no, thank you.
22 A I don't know whether your stomach's upset, but
23 this...
24 MS. HA: Thanks.
25 Q (Continuing by Ms. McPhail) Yeah. The concern

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1 READ BACK AS FOLLOWS: "Q Yeah. The
2 concern here, Mr. Stefani, is that
3 because you didn't notify the city of
4 your September 27th subpoena until
5 October 17th, the city was deprived
6 of the ability to come in and seek --
7 I'm sorry."
8 Q (Continuing by Ms. McPhail) And to seek a
9 protective order. And the court rules -- I'm
10 almost done here.
11 MR. FINK: Okay.
12 Q (Continuing by Ms. McPhail) The court rules do
13 require that you serve the other parties at the
14 same time that you serve the deponent with the
15 subpoena, correct?
16 MR. FINK: Well, let me make my
17 objection to the predicate of your question.
18 MS. MCPHAIL: Okay.
19 MR. FINK: So-called question.
20 MS. MCPHAIL: Well, now there you go.
21 You were doing fine until you got to that.
22 MR. FINK: It's not really -- All
23 right. My objection is to the form of your
24 question. It isn't really a question. It's also
25 argumentative, and it doesn't ask a simple question.

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1 It is a statement on your part. And it's better
2 addressed to the court than to a witness.
3 MS. MCPHAIL: Thank you so much.
4 MR. FINK: You're welcome.
5 Q (Continuing by Ms. McPhail) Mr. Stefani, as I
6 said --
7 A (Interposing) He's right. You did say the
8 concerns, as opposed to asking a question.
9 Q Right.
10 A You were making --
11 Q (Interposing) Right, absolutely.
12 A I mean, I don't know what -- I don't know.
13 Q But I did ask a question at the end.
14 A Oh, I'm sorry.
15 Q I did ask a question at the end.
16 A I'm sorry. I didn't catch it.
17 Q I was prefacing the question --
18 A (Interposing) I didn't catch it.
19 Q -- with some information that Mr. Fink didn't want
20 me to say. But I said --
21 A (Interposing) Oh, I'm sorry. Go ahead.
22 Q And then I asked the question.
23 MR. FINK: I want you to say
24 whatever's on your mind.
25 MS. MCPHAIL: No. Only to the extent

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1 it's relevant.
2 MR. FINK: Well, obviously.
3 Q (Continuing by Ms. McPhail) Mr. Stefani?
4 A Yes, ma'am.
5 Q So you're aware, aren't you, that the court rules
6 require you to send a subpoena to all parties at
7 the time that you send it to the deponent, the
8 intended deponent?
9 A You know, I'd have to look at the rules. You may
10 very well be right, but I -- I don't know whether
11 the rules -- well, I got it right here. You know,
12 I have the rules here if you want to tell me. I
13 don't require -- I don't know whether it has to be
14 sent simultaneously or not. I don't know the
15 answer to that. I know they have to be served a
16 copy.
17 Q Okay. And do you believe that serving a copy
18 nineteen days after you serve it on the deponent is
19 acceptable under the rules?
20 MR. FINK: Objection. It calls for
21 you to give a legal conclusion. I don't know --
22 MS. MCPHAIL: (Interposing) Like
23 your other questions about on your opinion.
24 MR. FINK: I don't know if you're
25 qualified as an expert. Maybe we'll get a -- maybe

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1 we'll get an evidence expert to testify.
2 MS. MCPHAIL: Well, you asked for a
3 bunch of opinions.
4 MR. FINK: Not a legal conclusion.
5 MS. MCPHAIL: Yeah, you sure did.
6 MR. FINK: You think?
7 MS. MCPHAIL: Um-hum (affirmatively).
8 A I don't know what -- what the rules -- I mean,
9 seventeen days after you serve a subpoena is sort
10 of like a search warrant. I know you're very
11 familiar with search warrant law. Probable cause
12 can be stale twenty-four hours after it's served,
13 after the warrant is issued, and sometimes it can
14 be fresh probable cause two years later. It
15 depends on the circumstances. I don't know what --
16 Q (Continuing by Ms. McPhail) What does that have to
17 do with this?
18 A Well, what is reasonable for some search warrants
19 is not reasonable for others. And what's
20 reasonable for some subpoenas, may not be
21 reasonable for others. I don't know. I don't know
22 the answer to the question.
23 Q Okay. Thanks. That's all I have.
24 And I want to make sure you -- we're going
25 to give you back everything you gave us, documents,

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1 labeled -- some exhibits and some -- the other set
2 of documents that you copied for me, Mr. Stefani,
3 before. Remember I asked you to make a copy of the
4 ones that I had numbers on?
5 A Yeah.
6 Q And you did that, and we're giving them all back to
7 you?
8 A Oh, thank you.
9 Q So we don't have anything, right?
10 A I was told last night by somebody that I'm your
11 attorney.
12 MS. MCPHAIL: My attorney?
13 A That's what I was told.
14 MS. MCPHAIL: Am I getting money?
15 A No.
16 MS. MCPHAIL: Oh, well, then.
17 MR. FINK: I have one question that I
18 have waited patiently to ask.
19 A Okay.
20 RE-EXAMINATION
21 BY MR. FINK:
22 Q Ms. Ha asked you, Mr. Stefani, with regard to
23 Exhibit 13, the "Confidentiality Agreement" of
24 November 1, 2007. She asked you did -- were any
25 city officials given a copy of Exhibit 13. Were

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1 two city officials obviously given a copy of
 2 Exhibit 13?
 3 MS. MCPHAIL: What are you pointing
 4 him to, Mr. Fink?
 5 A Christine Beatty and Kwame Kilpatrick's signatures.
 6 MR. FINK: Thank you. That's all.
 7 MS. MCPHAIL: Does that mean they got
 8 a copy?
 9 MR. FINK: They signed it.
 10 MS. MCPHAIL: Does that mean they got
 11 a copy?
 12 MR. FINK: Hell yes.
 13 RE-EXAMINATION
 14 BY MS. MCPHAIL:
 15 Q Are you saying that, Mr. Stefani, that you saw them
 16 get a copy?
 17 A I'm not saying that.
 18 MR. FINK: No. I'm still asking the
 19 questions.
 20 MS. MCPHAIL: Okay.
 21 A I do -- don't forget, though, I have a very short
 22 statement that I want to put on the record.
 23 MR. FINK: Go ahead. I'm done.
 24 A So don't walk out of here without letting me do
 25 that.

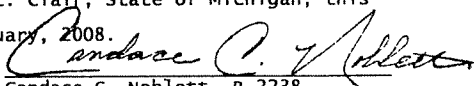
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1 MR. FINK: I am done.
 2 A And the statement is --
 3 MR. FINK: (Interposing) Unless Mr.
 4 Stewart has...
 5 MR. STEWART: I have nothing further.
 6 Thank you, Mr. Stefani.
 7 A All right. Thank you.
 8 MS. MCPHAIL: Mr. Stefani, with all
 9 due respect, I mean, I'm not sure that this is the
 10 place for you to make a statement.
 11 MR. FINK: I have no objection to it.
 12 Go ahead.
 13 MR. STEWART: I have no objection.
 14 MS. MCPHAIL: Okay. But I do.
 15 MR. FINK: Okay. Well, objection
 16 noted.
 17 MS. MCPHAIL: I mean, we don't even
 18 know what you're going to say.
 19 MR. STEWART: Well, objection noted.
 20 You go ahead and make your statement.
 21 MS. MCPHAIL: I mean, we don't want
 22 you to start talking --
 23 A Well, it has nothing to do -- no, it's not
 24 substantive, believe me. And even if you object,
 25 I'm going to put it on the record. But it's not

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1 substantive.
 2 It's just that I want everybody to know
 3 that I've got the e-mails, and you've all agreed
 4 that I didn't have to produce those, because
 5 they're just voluminous, and not --
 6 MS. MCPHAIL: (Interposing) Oh,
 7 okay.
 8 A Secondly, I wanted to say that under the
 9 Confidentiality Agreement, I was -- well, I already
 10 said that. I was instructed to say -- to reveal
 11 the fact that there was a Confidentiality
 12 Agreement. I didn't breach any trust by doing
 13 that.
 14 And the third thing we've already
 15 discussed, I would like to get the transcript,
 16 according to the new rules, when it's released, to
 17 make sure you didn't make your second mistake in
 18 thirty years, okay?
 19 MS. MCPHAIL: Thank you so much.
 20 MR. FINK: Well, we're done.
 21 * * *
 22 (WHEREUPON THE PROCEEDINGS IN
 23 THIS MATTER WERE CONCLUDED AT
 24 6:52 P.M.)
 25

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1 STATE OF MICHIGAN }
 2 COUNTY OF ST. CLAIR } SS
 3 CERTIFICATE OF NOTARY PUBLIC
 4 I, the undersigned, do hereby certify that
 5 the witness, whose attached deposition was taken
 6 before me in the above-entitled matter, was by me
 7 first duly sworn to testify to the truth; that the
 8 testimony contained herein was by me reduced to
 9 writing in the presence of the witness by means of
 10 Stenography; afterwards transcribed on computer;
 11 and that the deposition is a true and complete
 12 transcript of the testimony given by the witness.
 13 I further certify that I am not connected
 14 by blood or marriage with any of the parties, their
 15 attorneys or agents; that I am not an employee of
 16 either of them; and that I am not interested,
 17 directly or indirectly, in the matter of
 18 controversy.
 19 IN WITNESS WHEREOF, I have hereunto set
 20 my hand and affixed my notarial seal at Riley, in
 21 the County of St. Clair, State of Michigan, this
 22 30th day of January, 2008.
 23 
 24 Candace C. Noblett R-2238
 25 Notary Public, St. Clair County, MI
 My Commission Expires: 5-23-2011

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